

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Zygmunt Orlowski,
Appellant,

v.

Stanton County Board of Equalization,
Appellee.

Case No: 19R 0273

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a residential parcel, with a legal description of: Lot #1 Thor’s Subdivision Springbranch Precinct 5.942 Acres (PT NW 9-24-1).
2. The Stanton County Assessor (the County Assessor) assessed the Subject Property at \$370,935 for tax year 2019.
3. Zygmunt Orlowski (the Taxpayer) protested this value to the Stanton County Board of Equalization (the County Board) and requested an assessed value of \$366,058 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$370,935 for tax year 2019.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on September 14, 2021 at 9 am, at Divots Conference Center, 4200 West Norfolk Ave, Norfolk, Nebraska, before Commissioner James D. Kuhn.
7. Zygmunt Orlowski was present at the hearing.
8. Cheryl Wolverton, the County Assessor, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of a determination of the County Board of Equalization is de novo.²
11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer stated he felt the breakdown in assessed value was wrong as he felt the land value was high and the improvement value was a little low.
17. The Taxpayer stated the value of the Subject Property was still under review by the Tax Equalization and Review Commission (TERC) at the time of filing but has since been determined that the Stanton County Board value was upheld by TERC.
18. The Taxpayer did not provide any evidence to show the 2019 value was incorrect.
19. The Assessor provided a property record file for the Subject Property. The Assessor stated all land of the same class in the Subject Property’s neighborhood is being valued by the same valuation model.
20. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
21. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 57,065
<u>Improvements</u>	<u>\$313,870</u>
Total	\$370,935

3. This Decision and Order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2019.
7. This Decision and Order is effective on November 16, 2021.

Signed and Sealed: November 16, 2021

James D. Kuhn, Commissioner