

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Thomas D. Sciuga,  
Appellant,

v.

Merrick County Board of Equalization,  
Appellee.

Case No: 19R 0286

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a vacant lot, with a legal description of: Bison Lakeview 21 Sub Lot 5 45-4 CC (59,034 Sq Ft Irr Lot).
2. The Merrick County Assessor (the Assessor) assessed the Subject Property at \$110,985 for tax year 2019.
3. Thomas D. Sciuga (the Taxpayer) protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$27,745 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$110,985 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 24, 2020, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Thomas D. Sciuga was present at the hearing.
8. Lynelle Homolka (the Attorney) 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.<sup>1</sup>
10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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 sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>2</sup> 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).

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

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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated the current assessment of the Subject Property is in excess of what he purchased the property for. The Taxpayer purchased the Subject Property for \$49,000; then divided it into seven residential lots, which would equal \$7,000 per lot.
17. The Taxpayer stated the Subject Property is 1.5 acres with little road frontage and he did not feel he could sell the property for the current assessed value. All the lots in the Bison Lakeview subdivision, including the Subject Property, are being assessed on a square foot basis at \$1.88 per square foot.
18. The Taxpayer provided property record files (PRF) for comparable properties from the Byers Subdivision, which he stated was very close to the Subject Property, probably 4,000 feet away. The lots in the Byers Subdivision are being valued on a price per lot basis.
19. When dividing the lot value by the square footage, the lots in the Byers Subdivision range from \$1.80 to \$2.06 per square foot with a median value of \$2.05 per square foot, which is higher than the Subject Property’s price per square foot.
20. The Taxpayer provided PRF for two additional properties that were not part of a subdivision but were their own acreages. The Commission did not consider these to be truly comparable properties.

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<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

21. 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.
22. 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.

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: **\$110,985**.
3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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 February 19, 2021.

Signed and Sealed: February 19, 2021

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James D. Kuhn, Commissioner