

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Adam M. Phipps,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 19R 0343 & 20R 0117

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a rural single-family dwelling, with a legal description of: S36, T9, R7, 6th Principal Meridian, Lot 4 SW.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$331,600 for tax years 2019 and 2020.
3. Adam M. Phipps (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board) and requested a lower assessment for tax years 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$331,600 for tax years 2019 and 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 30, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Adam M. Phipps was present at the hearing.
8. Tim Sealock (the Appraiser) 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 sufficient competent evidence to justify its action.”³ That presumption “remains until

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).

³ *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.”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 his appeal was about the valuation placed on the land portion of the Subject Property. The Taxpayer stated there are properties near the Subject Property with more acres than his property, yet they are valued the same as the Subject Property that consists of 2.07 acres. The Taxpayer provided a spreadsheet with six parcel addresses with different acre sizes: four of them having 5.1 acres, one having 6.1 acres and one with 10.53 acres. All the properties had a county assessed land value of \$90,000 except the 10.53 acre parcel which had a land value of \$98,800.
17. The Taxpayer stated that usually in life when you have more of something it would have more value. The Taxpayer stated his opinion of land value for the Subject Property would be \$76,500, however the Taxpayer did not show how he arrived at that value. The Taxpayer’s spreadsheet showed a “cost per acre” comparison that he believed showed the inequity between other similar parcels and his on a per acre basis. The Taxpayer did not provide any property record files (PRF) for the comparable properties on his spreadsheet.
18. The Appraiser stated that homes in the neighborhood where the Subject Property is located, are being valued on a “lot” basis and not being valued on a per acre basis. The Appraiser stated they have not seen much difference in purchase prices for lots between two and ten acres so they are all being valued at the same “lot” value.

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).

19. 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.
20. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 and 2020 is: **\$331,600**.
3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 years 2019 and 2020.
7. This Decision and Order is effective on April 23, 2021.

Signed and Sealed: April 23, 2021

James D. Kuhn, Commissioner