

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Curt A. Beckenhauer,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0429

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: S21, T10, R8, 6th Principal Meridian, Lot 51 SE.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$481,400 for tax year 2019.
3. Curt A. Beckenhauer (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested a lower assessment for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$481,400 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 April 1, 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. Curt A. Beckenhauer 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 there is competent evidence to the contrary presented, and the presumption disappears

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).

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 there is some confusion as to what the Subject Property is. The Taxpayer contends the home is a one-story earth home over basement and the Assessor contends it is a one and a half story earth home built on a slab. The Taxpayer stated there is a five-foot berm on three sides of the Subject Property which would make that portion a basement. The Taxpayer contends the Subject Property should be valued as a one-story home over basement which would lower the assessed value from being valued as a one and a half story home. A referee for the Lancaster County Board of Equalization recommended lowering the value of the Subject Property to \$379,000, a value the Taxpayer agreed would be closer to market value. The referee’s supervisor did not agree and rejected the recommendation.
17. The Taxpayer stated there are also two major roadways that contribute lots of noise. Since there is a stoplight at the intersection of the two roadways, noise from semi-trucks applying their jake brakes or loud motorcycles accelerating when given a green light is an issue every day of the week.
18. The Taxpayer stated the size of the Subject Property’s land at 4.99 acres is also a problem as there are large marshy and wet areas that do not contribute to the value of the property.
19. The Appraiser stated the Subject Property is accessed from ground level, making it a main floor living area and not a basement. The Appraiser stated there is no access to the upper level of the home from the exterior which is consistent with a home having an

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).

upper story. The Appraiser stated the kitchen, dining room, living room, laundry room and master bedroom are located on the main level of the house and there are spare bedrooms, bathroom and living area on the upper level of the house as is typical in one and a half story homes. The Appraiser stated there is a five-foot berm on nearly 3 sides of the Subject Property and thus it should be classified it as an earth dwelling. The Appraiser stated there are numerous earth dwelling homes in Lancaster County and they are all being treated the same as the Subject Property.

20. The Commission did not receive any evidence to show the home is being valued unfairly or being treated any different than other similar properties.
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: **\$481,400**.
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 year 2019.
7. This Decision and Order is effective on April 23, 2021.

Signed and Sealed: April 23, 2021

James D. Kuhn, Commissioner