

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

Robert C. Schroeder,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 19R 0567

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a single family dwelling, with a legal description of: East Lawn Terrace, Block 2, Lot 20.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$104,500 for tax year 2019.
3. Robert C. Schroeder (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$104,500 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 October 15, 2020, 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. Robert C. Schroeder was present at the hearing.
8. Brian Coulter (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.<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 there is competent evidence to the contrary presented, and the presumption disappears

<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).

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 there are numerous deficiencies with the Subject Property and feels the 2019 assessment is in excess of market value. The Taxpayer listed some of the deficiencies: 100 year old windows, broken dishwasher, space for stove needs to be widened and cannot be used currently, leaky basement, three basement drains are plugged, floor of deck needs to be replaced, tree in front yard needs to be removed, floor in bathroom needs to be replaced and “several other minor problems exist.”
17. The Taxpayer provided a hand written list of items needing to be repaired and his estimate of costs to repair along with several photos showing some of the deficiencies. The Taxpayer did not provide the Commission with any estimates from contractors with the estimated costs to repair.
18. The Taxpayer stated the comparable properties provided by the Appraiser are two bedroom homes whereas the Subject Property is only one bedroom. The Taxpayer stated a two bedroom home located at 3633 Everett St. sold three weeks ago for \$105,000. The Taxpayer did not provide a property record file (PRF) for his comparable for the Commission to analyze and see if it is truly comparable.
19. The Appraiser stated the current condition of the Subject Property (Average Minus) accounts for the deficiencies listed by the Taxpayer. The Appraiser stated the Assessor’s office does not value a property on the number of bedrooms, so even though the

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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).

comparable properties are two bedroom homes, their square footage and style are similar to the Subject Property thus making them good comparables.

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.

## 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 \$104,500.
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 February 10, 2021.

Signed and Sealed: February 10, 2021

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James D. Kuhn, Commissioner