

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Zachary Z. Zoul,
Appellant,

v.

Gosper County Board of Equalization,
Appellee.

Case No: 19R 0128

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family residence, with a legal description of: Lot 8 Mallard Cove SEC E Improvements Only located upon PT E ½-E ½ 1-8-23 S-T-R 36-8-23.
2. The Gosper County Assessor (the Assessor) assessed the Subject Property at \$141,227 for tax year 2019.
3. Zachary Z. Zoul (the Taxpayer) protested this value to the Gosper County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$141,227 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 July 14, 2020, at Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Zachary Z. Zoul was present at the hearing.
8. Cheryl Taft (the Assessor) and Beverly Louthan (the County Attorney) were 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 purchased the Subject Property for \$87,500 in 2012. Restrictions are very tight on the property and he is unable to make any additions to the 623 square foot lake cabin. The Subject Property is a concrete block structure with no insulation and no improvements have been made other than some cosmetic improvements.
17. The Assessor stated the Subject Property is a leasehold; no land is part of the valuation. The Subject Property is a lakefront cabin with lake frontage on 3 sides. The Assessor stated there are no truly comparable properties to the Subject Property; only one other cabin has concrete block construction but that cabin now has siding.
18. The Assessor has seen an increase in sale prices of properties on the lake and has had to increase assessed values for all the properties in the Subject Property’s neighborhood for the past few years to reflect the market trends. The Assessor made a 10% downward adjustment to the Subject Property due to the difficult access to the property.
19. The Taxpayer has not provided any tangible evidence to show the Subject Property is being unfairly assessed; simply disagreeing with the value is not evidence enough for the Commission to rule in his favor. The increase in value from the 2012 purchase price is

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).

explained by the fact that sales prices in the neighborhood have increased steadily over the past few years.

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:

Land	\$	0
<u>Improvements</u>		<u>\$141,227</u>
Total		\$141,227

3. This Decision and Order, if no further action is taken, shall be certified to the Gosper County Treasurer and the Gosper 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 September 18, 2020.

Signed and Sealed: September 18, 2020

James D. Kuhn, Commissioner