

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dorothy D. Raney,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0135

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Junction Place Addition, Block 4, Lot 4-7.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$149,800 for tax year 2019.
Dorothy D. Raney (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$122,000 for tax year 2019.
3. The County Board determined that the taxable value of the Subject Property was \$149,800 for tax year 2019.
4. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
5. A Single Commissioner hearing was held on August 24, 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.
6. Richard F. Clough, personal representative of the estate, was present at the hearing for the Taxpayer.
7. Bret Smith (the Appraiser) was present for the County Board.

Applicable Law

8. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
9. The Commission’s review of a determination of the County Board of Equalization is de novo.²
10. 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

11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

15. The Taxpayer stated the Subject Property is a manufactured home built in 1999 that is still in its original state. The Taxpayer stated a new roof to the home and garage in 2016 are the only improvements made to the Subject Property. The Taxpayer stated the 30x60 garage in the backyard is in very poor condition with holes in the walls; however, the roof was replaced in 2016. The Taxpayer stated the location near a grain facility should be a factor when valuing the Subject Property because of all the grain dust.
16. The Taxpayer hired an independent appraiser who performed an appraisal of the Subject Property as of September 25, 2019. The Taxpayer’s appraiser, Brett Raasch, arrived at a value of \$118,000. Raasch did not attribute any value to the 30x60 garage; his explanation was that the cost to cure the deficiencies would outweigh the value of the garage.
17. The Appraiser stated that the Subject Property received an average-minus CDU ranking because it is a manufactured home, which lowered the value 12% to 15%. The Appraiser stated the land value has also been discounted 50% due to the location of the Subject Property.

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).

18. The Appraiser stated the 30x60 garage should have some value attributed to it. The Appraiser stated garages are usually an asset to a property and can add value up to 25% more for a property. A property record file (PRF) was provided by the county; however, the Commission cannot determine the value attributed to the garage by the Assessor.
19. The Commission did not hear any testimony stating any improvements had been done to the Subject Property since January 1, 2019. The Commission is convinced the independent appraisal provided by the Taxpayer is the best evidence of value for the 2019 tax year.
20. The Taxpayer has 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 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

<u>Total</u>	<u>\$118,000</u>
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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 January 8, 2021.

Signed and Sealed: January 8, 2021

James D. Kuhn, Commissioner