

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

Michael Scherbak,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 19R 0151

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a single family dwelling, with a legal description of: North Lincoln, Block 2, Lot 8.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$45,600 for tax year 2019.
3. Michael Scherbak (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$24,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$45,600 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 19, 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. Michael Scherbak was present at the hearing.
8. Bret Smith (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

<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).

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.”<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 many issues that should keep the Subject Property from increasing in assessed value. The Taxpayer testified one of the issues is on Nebraska college football game days where many younger adults will walk across the property and will sometimes relieve themselves in the backyard of the property, party, and leave trash scattered all over the property that the Taxpayer has to clean up. Another of the Taxpayer’s issues is the fact that the Subject Property is in a flood plain. The Taxpayer stated there are steel girders from a factory that make an unsightly view from the backyard. The Taxpayer testified there are possible lead contaminants on the Subject Property as well.
17. The Appraiser stated the Subject Property was assessed at a lower value in the 2017 and 2018 tax years because he was told the Subject Property was unlivable due to the lead contamination on the property. The Appraiser stated he inspected the Subject Property in January 2019. He found that the house was being rented by the Taxpayer’s son and had been rented by him for the past few years. The Appraiser stated he did not know there was any basement to the home; it was being assessed as though there was only crawl space when in reality there is basement under half the house. The Appraiser stated that since he found basement and the house was actually livable and was being rented, he

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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).

increased the value for the 2019 tax year with the new information gathered during his review.

18. The Appraiser stated the Subject Property has been given a 15% reduction for location (to address the partying) and a 20% reduction to the land component for being in the flood plain. The Appraiser stated the detached garage was being valued as a shed to give it the lowest value possible. The Appraiser stated the Subject Property is the second largest home with a 2 (fair) quality rating in the neighborhood.
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 determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

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                | \$17,000        |
| <u>Improvements</u> | <u>\$28,600</u> |
| Total               | \$45,600        |

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 year 2019.
7. This Decision and Order is effective on January 11, 2021.

Signed and Sealed: January 11, 2021

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James D. Kuhn, Commissioner