

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald E. Losh Revocable Trust, Donald E. Losh,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0154

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Lincoln Original, Block 220, Lot 1.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$120,200 for tax year 2019.
3. Donald E. Losh (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$103,300 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$120,200 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. Donald E. Losh 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 1.¹
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 testified that no improvements have been made to the Subject Property since he moved into the property in 1985 other than replacing some kitchen appliances.
17. The Taxpayer stated the driveway is in need of repair as it has cracks and the chain link fence is in need of replacing. The Taxpayer estimates the cost to replace the driveway would be about \$10,000 and to fix the chain link fence would be over \$1,000.
18. The Taxpayer’s biggest issue was with a neighboring property located at 1041 C Street. The Taxpayer stated the neighboring property is in disrepair and provided photos showing the deficiencies with that property. The Taxpayer feels the decline of the neighborhood should be taken into consideration when assessing his home.
19. The Taxpayer did not offer any evidence to quantify the impact of the neighboring property’s condition on the market value of the Subject Property.
20. The Appraiser stated the neighborhood the Subject Property is located in has the lowest land values in the city of Lincoln due to the conditions described by the Taxpayer. The Appraiser testified the neighborhood also has a negative commercial influence which lowered land values 20%. The Appraiser stated the CDU (condition) of the Subject Property was lowered to an Average Minus to reflect the declining neighborhood.

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).

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:

Land	\$ 20,000
<u>Improvements</u>	<u>\$100,200</u>
Total	\$120,200

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

James D. Kuhn, Commissioner