

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael G. Donlan,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0171

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family, 1½ story townhouse, with a legal description of: Firethorn 6th Addition, Lot 35.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$529,200 for tax year 2019.
3. Michael G. Donlan (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested a lower assessment for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$529,200 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 August 26, 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 G. Donlan was present at the hearing.
8. Pat Dougherty (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 sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears

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).

³ *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.”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 stated he does not believe the comparable properties provided by the Appraiser are representative of the Subject Property. Two of the comparable properties are on the golf course, the Subject Property is not, and are single story homes with fewer steps, which according to the Taxpayer, makes them more valuable. The Taxpayer stated the Subject Property’s master bedroom is on the second floor, making it less desirable to potential buyers.
17. The Taxpayer stated the roof mate to the Subject Property located at 9274 Pioneer Ct. (9274 property) is comparable in size, has a master bedroom on the second floor and has a basement that is 84% finished with a legal bedroom. The Subject Property has a basement that is 52% finished but does not have an egress window for a legal basement bedroom. The Taxpayer stated 9274 property recently sold for \$432,500 after being on the market for 11 months.
18. The Appraiser stated the Subject Property was inspected in February 2019. The property at 9274 Pioneer Ct. had its valuation lowered because the sunroom was erroneously being valued as living area; this was corrected for 2019 tax year. The Appraiser stated the Subject Property has more square footage than the 9274 property. The Appraiser provided a spreadsheet with comparable properties supporting the current assessment.
19. The Commission analyzed the evidence provided by each party and deemed the 9274 Pioneer Ct. property to be the best comparable. The 9274 property is 1,067 square foot

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).

smaller on the main floor living area and its basement is 90 square feet smaller. The Subject Property has 989 more square feet of second floor area compared to the 9274 property. The Subject Property has a larger attached garage by 44 square feet and has one more fireplace than the 9274 property. The Subject Property has a price per square foot of \$109.96 whereas the 9274 property has a price per square foot of \$117.01, making the Subject Property \$7.05 less per square foot than the best comparable. Main floor living area and second floor living area are valued at a higher price per square foot than basement living area, which would lead to the Subject Property having a higher valuation.

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:

<u>Total</u>	<u>\$529,200</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 February 9, 2021.

Signed and Sealed: February 9, 2021

James D. Kuhn, Commissioner