

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Roger W. Wallace,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0182

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a vacant residential lot, with a legal description of: Lands Sec-Twn-Rng 23-15-10 – Ex E 10 Ft – Irreg N 269.26 W 507.32 E 1367.32 FT S ½ NE ¼ Sec 23-15-10 2.95 Ac Approx.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$59,000 for tax year 2019.
3. Roger W. Wallace (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$500 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$59,000 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 November 3, 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. Roger W. Wallace was present at the hearing.
8. Kurt Skradis (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 stated the Subject Property is land locked with no easement, has no utilities and cannot be developed. The Taxpayer stated he bought the Subject Property since it joins on to his residential parcel and he thinks the greenspace would make his other properties more valuable.
17. The Taxpayer stated one of the reasons he purchased the Subject Property is because his leech field from his residence runs to the Subject Property and he did not want to have to put in a new septic field or hook up to City utilities. The Taxpayer estimated it would cost \$80,000 to hook up to the utilities.
18. The Taxpayer feels the Subject Property should be valued as greenspace or an out-lot like the one located in an area development called the Sanctuary. The greenspace, or out-lot as described by the Assessor’s office, in the Sanctuary is valued at \$500 and consists of 23.742 acres. The Taxpayer provided information about an out-lot in another area described as the Hamptons that is assessed at \$200 and consists of 12.917 acres. The Taxpayer described a 5.64 acre tract of land owned by Christine Buggy that is assessed at \$50,000 or \$8,865 per acre.

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).

19. The Appraiser stated the Subject Property is buildable and other homes have been built on similar lots. The Appraiser stated the Taxpayer owns the properties on two sides of the Subject Property and the Subject Property actually adjoins his other parcels so there may not be an easement in place but there is access to the property.
20. The Appraiser explained the difference between the Taxpayer's comparable properties and the Subject Property. The Appraiser stated all three of these properties are not comparable to the Subject Property due to the differences in land use and topography.
21. The Taxpayer did not provide any property record files (PRF) for the Commission to analyze. Without the details contained in the PRF, the Commission is unable to determine whether the properties described by the Taxpayer are truly comparable to the Subject Property. For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 4, 2020, includes the following:
***NOTE:** Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*
22. 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.
23. 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>\$59,000</u>
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3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 13, 2021.

Signed and Sealed: January 13, 2021

James D. Kuhn, Commissioner