

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

Paul A. Frerichs,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 19R 0183

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a single family dwelling, with a legal description of: Schmailzl Tract, Block 2, Lot 2.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$214,700 for tax year 2019.
3. Paul Frerichs (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$214,700 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 27, 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. Paul Frerichs was present at the hearing.
8. Lyman Taylor (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 there is competent evidence to the contrary presented, and the presumption disappears

<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).

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 the increase in value was excessive when no improvements have been made to the Subject Property.
17. The Taxpayer stated two large grain bins cause lots of dust from trucks loading and unloading and have dryers that cause noise much of the time. The Taxpayer stated more grain bins are planned to be built soon.
18. The Taxpayer provided property detail sheets of four homes he believes are comparable properties. All the comparable properties are located in the same town as the Subject Property.
19. The Appraiser stated the city of Hallam was reappraised for the 2019 tax year. The Appraiser stated recent market data was showing increasing values in the Hallam neighborhood, so an increase in values for both land and improvements was necessary. The Appraiser testified that there have been more vacant land sales showing an increase in land value. The Appraiser provided a comparable sales report with five comparable homes that have sold in the city of Hallam from 2016 to 2018.
20. The Appraiser stated the Taxpayer’s comparable properties are modular homes and are not truly comparable to the Subject Property.
21. The Commission was not given any evidence to quantify the effect of the grain bins on the market value of the Subject Property and the Taxpayer did not provide any property

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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).

record files (PRF) of the comparable properties for the Commission to examine to see if they truly were comparable.

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:

Land	\$ 24,000
<u>Improvements</u>	<u>\$190,700</u>
Total	\$214,700

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