

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Anthony D. Whitman,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case No: 19R 0024

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Glynn's Add. 6-3.
2. The Lincoln County Assessor (the Assessor) assessed the Subject Property at \$57,833 for tax year 2019.
3. Anthony Whitman (the Taxpayer) protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$45,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$49,495 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 July 14, 2020, at Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Anthony D. Whitman was present at the hearing.
8. Stephen King (Deputy County Attorney) and Julie Stenger (the Assessor) were 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

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).

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 does not have central air, has settling issues with the foundation as well as cracks in the foundation, and has a low ceiling height in the basement. The Taxpayer feels the Subject Property is in a blighted area of town and says the taxes are getting too high.
17. The Taxpayer stated there are comparable properties located near the Subject Property with lower assessed values than his property. The Taxpayer did not provide any Property Record Files (PRF) for any of the nearby properties. Without the PRF of these properties, the Commission cannot make the comparisons needed to see if the properties are truly comparable.⁹
18. The Assessor stated her office gave the Subject Property functional depreciation in 2017 for water and mold issues in the basement, and also removed value for a detached garage that had no contributory value to the property. The Assessor stated an Appraiser from her office visited the Subject Property again in 2018 to see if any of the previous year’s issues had been corrected. The Appraiser was unable to contact the Taxpayer personally

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).

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 22, 2019, 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.

or through a phone call and assumed the basement issues were rehabilitated since the home was for rent. The Assessor stated her office recommended changing the condition of the Subject Property to below normal condition and recommended a lower improvement value to the Board.

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.

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	\$ 5,143
<u>Improvements</u>	<u>\$44,352</u>
Total	\$49,495

3. This Decision and Order, if no further action is taken, shall be certified to the Lincoln County Treasurer and the Lincoln 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 8, 2021.

Signed and Sealed: January 8, 2021

James D. Kuhn, Commissioner