

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rodney R. Wellman,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0456

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Prairie Village North 10th Addition, Block 3, Lot 2.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$294,100 for tax year 2019.
3. Rodney Wellman (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$268,900 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$294,100 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 16, 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. Rodney R. Wellman was present at the hearing.
8. Derrick Niederklein (the Assessor) 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

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 that eight homes were built by the same builder with two of them being the exact same floor plan as the Subject Property. The Taxpayer stated the two homes with the same floor plan as the Subject Property have sold and should have been used by the County as comparable properties to value his home. Both comparables are assessed lower than the Subject Property according to the Taxpayer. No property record files (PRF) of the comparable properties were provided to the Commission.
17. The Taxpayer stated he did not feel the comparable properties used by the county model were the best comparables the county could have used and suggested his comparables would have been more reflective of his home.
18. The Taxpayer stated his lot is odd shaped and slopes from north to south. The Taxpayer stated the Subject Property is an all-electric home with no gas service. The Taxpayer was unable to quantify how the lot shape or the lack of gas service to the Subject Property affected its value.
19. The Assessor provided a comparable sales report for the Subject Property which shows five comparable properties and their characteristics as compared to the Subject Property. The comparable properties have sale prices ranging from \$194.62 to \$227.89 per square foot. The Subject Property is assessed at \$208.14 per square foot which falls into the middle of the range of sales of similar properties.

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).

20. The Taxpayer did not provide any PRF for comparable properties. Without the details contained in the PRF, the Commission is unable to analyze the characteristics of these properties to determine whether they are comparable to the Subject Property or whether sales comparison adjustments could make them comparable to the Subject Property.⁹
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	\$ 55,000
<u>Improvements</u>	<u>\$239,100</u>
Total	\$294,100

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 13, 2021.

Signed and Sealed: January 13, 2021

James D. Kuhn, Commissioner

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 27, 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.*