

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Sarah E. Bauermeister,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case No: 20R 0002

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
MADISON COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a residential parcel with a legal description of Tax Lots NE1/4 NW1/4 22-24-1 PT Tax Lot 16 (Tract B-Lot Boundary Change-2016).
2. The Madison County Assessor assessed the Subject Property at \$190,620 for tax year 2020.
3. Sarah E. Bauermeister (the Taxpayer) protested this value to the Madison County Board of Equalization (the County Board) and requested an assessed value of \$163,433 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$190,315 for tax year 2020.
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 September 10, 2021, at Divots Conference Center, 4200 W Norfolk Ave, Norfolk, Nebraska, before Commissioner James D. Kuhn.
7. Sarah Bauermeister was present at the hearing for the Taxpayer.
8. Jeff Hackerott (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 they have not done any improvements to the Subject Property since they purchased it about eight years ago for \$70,000. The Taxpayer admitted they probably received a “good deal” on the property as they purchased it from family.
17. The Taxpayer provided eight Zillow print outs of properties that have sold in Norfolk, but no property record files (PRF) were provided for these properties for the Commission to see if any of the properties are truly comparable to the Subject Property.
18. The Assessor provided a spreadsheet with five comparable properties from the Subject Property’s neighborhood showing that the Subject Property has an assessed value per square foot that was within the range of the comparable properties assessed values per square foot of improvements. The Assessor felt the Subject Property was being fairly assessed and would not recommend a change in value. During the protest proceedings, the Assessor recommended a slight reduction in assessed value to the County Board after reviewing the property and finding that a small building’s value should be removed. The County Board followed this recommendation.

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. Neither party provided any PRF for the Subject Property or comparables. Without PRF of comparable sales for the Commission to analyze, the Commission does not have enough evidence to overturn the value set by the County Board.⁹
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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 14,112
<u>Improvements</u>	<u>\$176,203</u>
Total	\$190,315

3. This Decision and Order, if no further action is taken, shall be certified to the Madison County Treasurer and the Madison 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 2020.
7. This Decision and Order is effective on November 16, 2021.

Signed and Sealed: November 16, 2021

James D. Kuhn, Commissioner

⁹ For this reason, the Order for Single Commissioner Hearing and Notice of Hearing issued to the parties on August 11, 2021, 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.*