

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dallas L. Shearer,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case No: 20R 0009

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

Background

1. The Subject Property is a rural residential parcel with a legal description of Pittman 3rd Replat Lot 1, 7.97 +/- Acres.
2. The Lincoln County Assessor assessed the Subject Property at \$212,730 for tax year 2020.
3. Dallas L. Shearer (the Taxpayer) protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$172,245 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$199,166 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 July 16, 2021, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Dallas L. Shearer was present at the hearing.
8. Julie Stenger (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 the Subject Property is landlocked with a narrow access road that is not wide enough to be a legal county road. The Taxpayer stated the land value increased nearly \$47,000 in one year with no apparent reason.
17. The Taxpayer stated that nearby properties are being valued lower per acre than the Subject Property. The Taxpayer contends the nearby properties are very similar to the Subject Property in soil type. No property record files (PRF) were provided by the Taxpayer for the Commission to analyze to see if they truly are comparable properties. Additionally, because the Subject Property is not used for agriculture, the soil type does not affect the assessed value.
18. The Assessor stated the Subject Property is being valued the same as all other smaller parcels as well as the comparable properties described by the Taxpayer. The Assessor stated the first acre is being valued at \$45,000, the next 6.97 acres are being valued at \$3,500 per acre. The Assessor has two more excess acre breakdowns, but the Subject Property is not large enough for those to be an issue.
19. The Assessor stated that rural land in Lincoln County was revalued for the 2020 tax year, thus increasing the Subject Property’s land value nearly \$47,000 from the 2019 tax year. The Assessor stated her office did a review of the Subject Property and found issues with the basement that led them to lowering the assessment of the improvements, but they

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).

were unable to recommend lowering the land value because that would cause dis-equalization with other similar situated properties. The Assessor noted that the Taxpayer did qualify for Homestead Exemption, which he did file and receive for the 2020 tax year.

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	\$ 69,395
<u>Improvements</u>	<u>\$129,771</u>
Total	\$199,166

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 2020.
7. This Decision and Order is effective on December 14, 2021.

Signed and Sealed: December 14, 2021

James D. Kuhn, Commissioner