

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bradley E. Osthus,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 20R 0129

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

Background

1. The Subject Property is a residential parcel with a legal description of Lot 1-A Deer Trail Sub-D an Admin Replat of Lot 1 Armory 2nd to Nebraska City.
2. The Otoe County Assessor assessed the Subject Property at \$353,380 for tax year 2020.
3. Bradley E. Osthus (the Taxpayer) protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$287,510 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$353,380 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 February 11, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Bradley E. Osthus was present at the hearing.
8. Christina Smallfoot (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 provided three comparable properties that are either on the same block or very near the Subject Property. All the comparable properties are similar in many ways but are valued at a lower price per square foot than the Subject Property. The Taxpayer stated he compared the tax bills of each of the comparable properties to his and the bill for the Subject Property was higher.
17. The Assessor stated the property record file (PRF) has all the information correct for the Subject Property and she feels the assessment is correct. The Assessor stated the current assessment is lower than the 2018 purchase price of \$382,740.
18. The Commission analyzed the evidence given by the Taxpayer and found the comparable properties similar to the Subject Property but not the same. The Subject Property is superior to comparable properties in square footage, total area, basement area, partition finish, fixtures, and concrete drive. In combination, these qualities give the Subject Property a higher base construction cost than any of the comparable properties.
19. The Subject Property has a solar room that no comparable has, which contributes \$23,940 (before depreciation) to the Subject Property’s assessed value.
20. The Subject Property has a detached garage, which two of the comparables do not have. The Subject Property has other items that are similar to the comparable properties such as fireplace, porches, deck and garage finish, which are all being valued similarly.

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).

21. The Commission finds the Subject Property is superior to the comparable properties provided and therefore would be valued higher. The Taxpayer has not provided evidence to show any information in the PRF is incorrect for the Subject Property or any of the comparable properties. The Taxpayer has not provided any clear and convincing evidence that the actual value of the Subject Property is lower than the value determined by the County Assessor, and the 2020 assessed value is nearly \$30,000 lower than the 2018 purchase price.
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.

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	\$ 20,000
<u>Improvements</u>	<u>\$333,380</u>
Total	\$353,380

3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe 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 May 13, 2022.

Signed and Sealed: May 13, 2022

James D. Kuhn, Commissioner