

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gregory S. Broadfoot,
Appellant,

v.

Red Willow County Board of Equalization,
Appellee.

Case No: 20R 0328

**DECISION AND ORDER
REVERSING THE DECISION OF THE
RED WILLOW COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a residential parcel with a legal description of 24-3-30 Bishop Acres Subdivision 24-3-30 Lot 2 3.02 Acres.
2. The Red Willow County Assessor assessed the Subject Property at \$453,189 for tax year 2020.
3. Gregory S. Broadfoot (the Taxpayer) protested this value to the Red Willow County Board of Equalization (the County Board) and requested an assessed value of \$300,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$453,189 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 15, 2021, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Gregory S. Broadfoot was present at the hearing.
8. Kristi Korell (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 was newly built for 2020 tax year. The Subject Property is a ranch style home with 1 bedroom and 1.5 bathrooms with an unfinished basement. The Taxpayer stated a 30 x 36 detached garage was also built at the same time as the home.
17. The Taxpayer provided an independent appraisal done by Kristell Randel of Randel Appraisal that showed an appraised value of \$335,000 as of February 1, 2019. The appraisal was done prior to construction; the property was appraised based on the plans and then inspected after completion of construction. A certificate of completion was included in the appraisal. The appraiser certified that the appraisal was completed in accordance with the applicable Uniform Standards of Professional Appraisal Practice.
18. The Assessor provided a property record file (PRF) for the Subject Property as well as comparable sales and comparable properties. The Assessor stated there was a 6% increase on all improvements of rural properties for the 2020 tax year due to increasing sales prices of rural homes as compared to assessed values.
19. The Assessor stated the building permits for the Subject Property added up to \$448,000 and she feels the current assessment is correct.

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 Commission is not convinced adding 6% to the improvements of a newly built home is reasonable. The Commission is also not convinced using building permit values to quantify an assessment is reasonable; cost and value are not the same.
21. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to rebut the presumption in favor of the County Board's determination under Nebraska law.⁹
22. In addition to being competent evidence to rebut the presumption in favor of the County Board, the Taxpayer's appraisal is the best evidence presented to the Commission of the Subject Property's value.
23. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. The Taxpayer has 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 35,100
<u>Improvements</u>	<u>\$299,900</u>
Total	\$335,000

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

⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

7. This Decision and Order is effective on December 21, 2021.

Signed and Sealed: December 21, 2021

James D. Kuhn, Commissioner