

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dale Wimer,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 20R 0340

**DECISION AND ORDER
REVERSING THE DECISION OF THE
DODGE COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a residential parcel with a legal description of Brooks Hollow Addition Lot 9, Blk 4.
2. The Dodge County Assessor assessed the Subject Property at \$422,171 for tax year 2020.
3. Dale Wimer (the Taxpayer) protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$320,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$422,171 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 August 5, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Dale Wimer was present at the hearing.
8. Debbie Churchill (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 nothing has been done to the Subject Property to warrant a large increase in value from tax year 2019 to tax year 2020. The Taxpayer stated the Subject Property does not have a finished basement, yet is being valued as having 922 square feet of basement finish.
17. The Taxpayer provided three comparable property record files (PRF) of two-story homes that would be considered similar to the Subject Property. The Commission was unable to compare these properties to the Subject Property because the PRF did not show any values attributed to any of the amenities of the properties. The Taxpayer provided an independent appraisal of a neighboring property, but the Commission gave the appraisal little weight as evidence.
18. The Taxpayer provided a 2020 Notice of Valuation Change by the Dodge County Board of Equalization dated June 3, 2020, showing a “current value” of \$422,171 and an “amended value” of \$386,086. The Taxpayer also provided a paper titled Action Taken by the Dodge County Board of Equalization showing a “No Change” determination with a value of \$422,171. The Commission is unsure how the Board of Equalization determined \$422,171 was the 2020 value when the amended value was \$386,086 as of June 3, 2020.

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. The Assessor stated she did not have any sales of two-story homes similar to the Subject Property. The Assessor stated her office was denied access to inspect the Subject Property but would recommend removing the value of the basement finish if her office was allowed to verify it was unfinished.
20. The Commission determines the \$386,086 noticed value as the 2020 assessed value. The PRF of the Subject Property attributes \$19,823 to 922 square foot of basement finish. The Commission therefore finds and determines a taxable value of \$366,263 (\$386,086 – \$19,823 = \$366,263).
21. 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.
22. 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: **\$366,263**.
3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 March 18, 2022.

Signed and Sealed: March 18, 2022

James D. Kuhn, Commissioner