

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jerry D. Allen,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case No: 20R 0350

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

Background

1. The Subject Property is a residential parcel with a legal description of Block 2 Lot 10 Paddocks Addition.
2. The Dawes County Assessor assessed the Subject Property at \$40,044 for tax year 2020.
3. Jerry D. Allen (the Taxpayer) protested this value to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$19,360 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$36,684 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 24, 2021, at Hampton Inn & Suites, 301 US-26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Jerry D. Allen was present at the hearing.
8. Lindy Coleman (the Assessor) and Kent Hadenfeldt (County Attorney) were 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 he purchased the Subject Property for \$19,500, which included paying the back taxes owed on the property. The Taxpayer stated the assessed value was lowered after he purchased the Subject Property and he doesn’t understand how the assessment has increased so much.
17. The Assessor stated the Subject Property value was lowered after the Taxpayer purchased it since it was not considered habitable at the time, and she gave it a functional depreciation to account for that fact.
18. The Taxpayer stated he has done minimal work to the Subject Property; however, it is now being rented.
19. The Assessor stated that during a review, she discovered the Subject Property was being rented, so she removed the functional depreciation now that it is habitable. The Assessor stated she talked with the Taxpayer after a protest was filed, made corrections to the property record file, and recommended a lower assessed value than the noticed value 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.

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 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 | \$ 2,940 |
| <u>Improvements</u> | <u>\$33,744</u> |
| Total | \$36,684 |

3. This Decision and Order, if no further action is taken, shall be certified to the Dawes County Treasurer and the Dawes 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 January 31, 2022.

Signed and Sealed: January 31, 2022

James D. Kuhn, Commissioner