

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

ANTHONY "TONY"
WHITMAN
APPELLANT,

V.

LINCOLN COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 22R 0192

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

I. BACKGROUND

1. The Subject Property is a residential parcel improved with a 932 square foot single family house in Lincoln County, parcel number 0015200.00.
2. The Lincoln County Assessor (the County Assessor) assessed the Subject Property at \$69,710 for tax year 2022.
3. Anthony "Tony" Whitman (the Taxpayer) protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$60,000 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$69,710 for tax year 2022.
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 14, 2023 at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, NE, before Commissioner James D. Kuhn.
7. Anthony "Tony" Whitman was present at the hearing for the Taxpayer.
8. Tyler Volkmer was present for the County Board.

II. 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 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer asserted the valuation of Subject Property is excessive because the property is adjacent to a Railroad and a junkyard, and these factors should warrant a reduced valuation for the Subject Property.
17. The Taxpayer presented an overhead photo of the neighborhood that highlighted the condition of the properties surrounding the Subject Property.
18. The Taxpayer did not present any information or evidence to allow the Commission to quantify how the conditions of the area surrounding the Subject Property impacted the valuation.
19. The Taxpayer presented two comparable properties to the Subject Property.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

21. The Taxpayer asserted that one of the comparable properties presented by the County Board is located outside of the neighborhood and does not reflect the Subject Property.
22. The County Board testified there was a 7% increase for trend adjustment in Subject Property's area.
23. The County Board presented comparable properties that support the assessed valuation.
24. The County Board referenced the Taxpayer's preferred comparable properties in the reconciliation and outlined the differences in condition quality and other factors that make them unsuitable comparable properties.
25. The Commission finds the County's comparable properties to be more comparable to the Subject Property than the Taxpayer's comparables and so affords greater weight to the County comparables and less weight to the Taxpayer's comparables.
26. 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.
27. 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.

IV. 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 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 6,837
<u>Improvements</u>	<u>\$ 62,873</u>
Total	\$ 69,710

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 2022.
7. This Decision and Order is effective on October 20, 2023.

Signed and Sealed: October 20, 2023



James D. Kuhn, Commissioner