

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert Ewoldt,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 17R 0005

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is an improved residential parcel, with a legal description of: IKIRU EAST, LOT 1, & E30' VAC S 88TH ST ADJ (08-26446).
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$376,400 for tax year 2017.
3. Robert Ewoldt (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$330,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$376,400 for tax year 2017.
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 June 19, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Tim Sealock of the County Assessor's Office 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 the 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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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).

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
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 asserted that the assessed value of the Subject Property was too high. In support of this position, the Taxpayer described a variety of problems with the Subject Property that could negatively impact its market value.
17. Based on a physical inspection of the Subject Property and other information received from the Taxpayer, the County Assessor determined that both the quality and condition ratings of the Subject Property should be lowered from “good” to “average,” and appropriate adjustments to the assessed value should be made on the basis of that change.
18. Mr. Sealock offered his opinion that, based on the new information received by the County Assessor, the correct actual value of the Subject Property was \$361,400.
19. The Taxpayer did not offer any evidence to demonstrate that this revised opinion of the Subject Property’s actual value was incorrect.
20. Competent evidence was presented that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
21. Clear and convincing evidence was adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

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 2017, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 90,000
<u>Improvements</u>	<u>\$271,400</u>
Total	\$361,400

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
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 2017.
7. This Decision and Order is effective on June 21, 2018.

Signed and Sealed: June 21, 2018

James D. Kuhn, Commissioner