

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert A. Martin,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 17R 0329

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family tenth floor apartment, with a legal description of: Georgian Place Condominium Property Regime, Amended, Unit #1003 (1.687641% interest).
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$193,100 for tax year 2017.
3. Robert A. Martin (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$193,100 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 July 17, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Robert A. Martin was present at the hearing for the Taxpayer.
8. Lyman Taylor 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 feels the Subject Property is being valued in excess of what he could sell it for, due to the fact that he has made no updates to his property. The Taxpayer stated that unit 903, in the same building, has an identical floor plan as the Subject Property and sold for \$209,000, but had recent updates to the kitchen cabinets, counter tops, and bathrooms, as well as all new appliances. The Taxpayer feels the Subject Property should be valued similarly to unit 804, which sold in 2017 for \$155,000, since neither unit has had recent updates.
17. The County Assessor provided a spreadsheet with the assessed values of every unit in the complex, as well as information on recent sales. The County Assessor acknowledged that the units are hard to value due to improvements being done without building permits. Unless building permits are filed, the Assessor’s office does not have knowledge of improvements and therefore may not have the most current interior information or the ability to add value as improvements are done. The County Assessor stated there are few sales in the complex, which makes it harder to value. The County Assessor stated that a tiered valuing system is used, with the higher floors of the complex having a higher price per square foot than the lower floors. This system is derived from the limited number of

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.).

sales in the complex over a number of years. Floors 8, 9, and 10 constitute a single tier under this system.

18. The Taxpayer questioned the County Assessor as to why unit 1004, which is adjacent to the Subject Property, was valued much lower than the Subject Property, since they are very similar. Unit 1004 sold for \$175,000 in 2016 and its assessment was lowered to \$175,000 by the County Board.
19. The Taxpayer failed to provide a requested value for the Subject Property and did not articulate a specific value different than the 2017 assessment. The Taxpayer stated the Subject Property should be valued “closer to the 2017 sale price of unit 804 which was \$155,000.”
20. The Commission finds the Taxpayer’s testimony credible as to the interior makeup of similar units and whether any have had recent updates. Mr. Taylor testified that the County Assessor has not had the opportunity to review interior information on much of the complex.
21. Recent sales of adjacent units for \$174,000 (2017 sale) and \$175,000 (2016 sale) indicate a lower market value for the Subject Property than the current assessed value. The Commission is persuaded that the Subject Property is overvalued in comparison with its market value.
22. Six units in the tier comprising floors 8, 9, and 10 sold between March 14, 2016, and December 13, 2017. The median sales price per square foot for these units was \$246.28. Based on the information presented at the hearing, this median value, derived from actual sales within the tier, is the best indicator of market value available to the Commission. The actual value of the Subject Property is \$246.28 per square foot × 719 square feet, or \$177,075.
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 reversed.

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	\$ 80,000
<u>Improvements</u>	<u>\$ 97,075</u>
Total	\$177,075

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 July 20, 2018.

Signed and Sealed: July 20, 2018

James D. Kuhn, Commissioner