

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

Brenda J. Bickford,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 17R 0363

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Hartland Homes Southwest 2<sup>nd</sup> Addition, Block 4, Lot 3.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$120,200 for tax year 2017.
3. Brenda J. Bickford (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$120,200 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 August 3, 2018 at 9:00 am, 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. The County Board did not appear at the hearing.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer feels the Subject Property is being valued in excess of its fair market value due to current condition of home. The Taxpayer stated that after she filed her appeal with TERC, the County Assessor’s office sent Cindy Pittman, Senior Residential Appraiser, to her home for a walk-thru. After the walk-thru, Ms. Pittman proposed to lower the condition of the Subject Property, resulting in a potential taxable value of \$107,600 for 2017. The Taxpayer requested information as to how the new assessment was determined. An email provided by the Taxpayer shows that Ms. Pittman stated “I am unable to get the information to you since you did not accept the value.” The Taxpayer feels she should not have to sign an agreement first in order to see how her value was computed.<sup>9</sup>
17. The Taxpayer stated she was told by the County Assessor’s office that there was a blanket increase to residential properties, however, the neighboring properties received increases ranging from 4.90% to 5.57% whereas the Subject Property was increased 26.53%. The County Assessor was not present at the hearing to explain the larger increase to the Subject Property.

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>9</sup> It appears from the documents provided by the Taxpayer that, after an initial refusal, Ms. Pittman subsequently provided information as to how the new value had been calculated.

18. The Taxpayer purchased the Subject Property on April 10, 2014, for \$95,000. The Taxpayer stated the Subject Property needed many improvements at the time of purchase that have yet to be addressed due to other important family issues taking first priority. She feels her purchase price is a better reflection of market value for the home due to the many repairs yet needed.
19. Based on the information presented at the hearing, the County Assessor appears to believe there is an issue with the current condition of the home by proposing to adjust the condition rating following a physical inspection. The Commission finds that the condition issues present when the Taxpayer purchased the home are yet to be resolved and the Taxpayer's purchase price would better represent its 2017 value.
20. 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.
21. 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 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$38,500
<u>Improvements</u>	<u>\$56,500</u>
Total	\$95,000

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 August 8, 2018.

Signed and Sealed: August 8, 2018

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James D. Kuhn, Commissioner