

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

Gary L. Bouc,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 17R 0385

Decision and Order Reversing  
the Decision of the Lancaster County Board  
of Equalization

Background

1. The Subject Property is residential parcel improved with a 2,251 square foot home. The legal description of the Subject Property is found in the Case File.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$368,800 for tax year 2017.
3. Gary L. Bouc (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 \$348,900 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 19, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Gary L. Bouc was present at the hearing.
8. Brian Coulter, an employee of the County Assessor, 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.<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>

#### Taxable Value

16. The Subject Property had significant damage to its exterior as a result of a hail storm in May 2016, including damage to the roof, gutters, windows, and deck.
17. The Taxpayer had extensive repairs made to the Subject Property during calendar year 2017. An invoice indicated a total of \$65,796 was paid for the repairs. These costs were all related to the cost to cure the damages associated with the May 2016 hail storm.
18. All of the exterior features that were repaired as a result of the storm had depreciated in value for 23 years prior to the hail damage. Therefore, once these features were repaired, the overall depreciation of the property would be reduced.
19. On November 9, 2017, the County Assessor conducted an inspection of the Subject Property, including both the exterior and the interior of the home. The inspection was done after the repairs discussed above had been completed. As a result of the inspection, the County Assessor lowered the quality rating of the Subject Property and determined that the assessed value of the Subject Property for tax year 2018 was \$317,400.
20. The County Assessor relied upon this assessment to set the assessed value for tax year 2018.

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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.).

21. Based upon the information presented, the Commission is persuaded that the taxable value should be no more than \$317,400 because that value was determined based upon the quality and condition of the property *after* the repairs had been completed. However, given that some of the damaged features were replaced with new features (shingles, windows, and gutters), the Commission is unable to determine how much of the costs to cure went to repair and how much went towards removing the depreciation on those features. In other words, after the repairs, the value of the home was arguably higher than before the storm because prior to the storm those same features had 23 years of depreciation reducing the value of the property. Consequently, the Commission is unable to quantify the difference in the value of the Subject Property as damaged (January 1, 2017) and the value of the property as repaired (January 1, 2018). As a result, based upon the information received, the Commission is unable to determine the precise value of the property as of January 1, 2017.
22. Since the Commission has found that the value should be no more than \$317,400, but has no basis to quantify that value, the Commission finds that the actual value of the Subject Property for tax year 2017 is \$317,400.

#### Equalized Value

23. The Taxpayer also asserted that the assessed value of the Subject Property was not equalized with the assessed values of three alleged comparable properties. Portions of the property record files for the alleged comparable properties were provided to the Commission. The Commission has reviewed those files and has concluded that there is not clear and convincing evidence that the valuation of the Subject Property is not equalized with the assessments of the alleged comparable properties.

#### Conclusions of Law

24. Competent evidence has been adduced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.<sup>9</sup>
25. Clear and convincing evidence has been adduced that the determination of the County Board is arbitrary or unreasonable, and the decision of the County Board should be vacated and reversed.

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<sup>9</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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 \$317,400.
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 July 30, 2018.

Signed and Sealed: July 30, 2018

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Robert W. Hotz, Commissioner