

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

Diane K. Kats,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 17R 0432

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is single family dwelling, with a legal description of: Cripple Creek East 6<sup>th</sup> Addition, Block 2, Lot 14.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$323,600 for tax year 2017.
3. Diane K. Kats (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 \$323,600 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 James D. Kuhn.
7. Diane K. Kats was present at the hearing.
8. Brian Coulter, Lancaster County Assessor’s Staff Appraiser, 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

<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 fair market value due to the current condition of the home. The Taxpayer stated that everything in the Subject Property was still original, as it was built in 1990. No updates to the interior or exterior have been done to the Subject Property. The Taxpayer stated that water damage was present in five places on the interior ceiling of the home due to a storm-damaged and aging roof; the roof was replaced in 2016.
17. The Taxpayer identified forty-three deficiencies with the Subject Property, with a majority of those being typical maintenance issues, such as a non-functioning dishwasher, leaking faucets, leaking toilets, new carpet needed, outdated wallpaper, caulking needed on bathroom tiles, non-functioning ceiling fan, doorbell not working, to name a few. Although all of these issues possibly pertain to the quality or condition of the home, they are easily remedied with normal maintenance.
18. The Taxpayer stated that the wood deck was in need of being replaced and there were some foundation issues causing water damage to the basement. In a prior inspection of the Subject Property by the Lancaster County Assessor’s Office, the foundation issue was not raised or observed due to cold conditions with possibly some snow cover.

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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.).

19. The County's Staff Appraiser asked to do an inspection of the property with the owner's permission, as the issues raised in the hearing might have an impact on the quality and condition rating of the property. The Commission granted time for the Taxpayer and the Staff Appraiser to arrange for an inspection of the property. Both parties agreed to a meeting on July 23 at 10:00 am.
20. The Staff Appraiser, Mr. Coulter, sent a letter to the Commission on August 7, 2018, stating that the Taxpayer was not home at the time of the agreed meeting on July 23, so he performed an exterior inspection while waiting a customary thirty minutes for the Taxpayer to arrive. The letter further stated that Mr. Coulter's subsequent, additional requests for an interior inspection of the property were denied and the Taxpayer expressed the hope he would just rely on the information from the hearing.
21. The Staff Appraiser was able to see the condition of the deck and recommended removing the value of the deck due to its poor condition; however, he was unable to recommend any other adjustments due to the Taxpayer's failure to make the Subject Property available for a full inspection.
22. The Staff Appraiser's observations of the condition of the deck, and his recommendation that the value of the deck be removed from the improvement value, constitutes competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. 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 and 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	\$ 60,000
<u>Improvements</u>	<u>\$261,800</u>
Total	\$321,800

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 September 7, 2018.

Signed and Sealed: September 7, 2018

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James D. Kuhn, Commissioner