

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brenda J. Bickford,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 19R 0238 & 20R 0489

Decision and Order Affirming the Decisions
of the Lancaster County Board of
Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Hartland Homes Southwest 2nd Addition, Block 4, Lot 3.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$126,600 for tax years 2019 and 2020.
3. Brenda J. Bickford (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board) and requested a lower assessment for tax years 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$126,600 for tax years 2019 and 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 29, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Brenda J. Bickford was present at the hearing.
8. Derrick Niederklein (the 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 1.¹
10. The Commission’s review of a 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 sufficient competent evidence to justify its action.”³ That presumption “remains until

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *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).

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

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 expressed her frustration with the County Assessor’s Office and not being able to gather the information she felt she needed to recreate the valuation of the Subject Property. The Taxpayer requested specific assessment information from the Assessor about how the Subject Property’s assessment was calculated. The Assessor provided property record files for the Subject Property and comparable properties; however, those did not contain any specific information that could be used to recreate the valuation of the Subject Property as the Taxpayer had asked for, they were more of a historical record.
17. In *Kawasaki Motors Corp. v. Lancaster County Board of Equalization*,⁹ the Nebraska Court of Appeals discussed a document offered into evidence at a Commission hearing, “which contains rather cryptic information on the income approach, without explanation[.] ... The computer printout continues for several pages and includes diagrams, descriptions of building dimensions, and other select information and ends by showing [the value appealed to the Commission]. Neither the document nor later testimony explains the significance of this information, and we this find the information worthless.”¹⁰
18. In *Kawasaki*, the Court of Appeals determined that the county board’s action was arbitrary and capricious because the county board relied upon an agreement between the

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ *Kawasaki Motors Corp. v. Lancaster County Board of Equalization*, 7 Neb.App. 655, 584 N.W.2d 63 (1998).

¹⁰ *Kawasaki* at 658, 66.

parties in a previous tax year to determine the value of Kawasaki's property. The board could not have relied upon the county assessor's computer records: "If the computer record of the county assessor's office contains a cryptic appraisal, the Board did not see fit to introduce evidence that the appraisal was explained to the Board or the Commission so it could be relied upon in arriving at a value."¹¹

19. The Commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹² However, even applying those tools, we are unable to recreate the valuation of the Subject Property from the information produced by the County Board. Therefore, we find that the action of the County Board relying on the information provided by the County Assessor was arbitrary or capricious.
20. As in *Kawasaki*, once the action of the County Board has been found to be arbitrary or capricious, "the reasonableness of the valuation fixed by the Board would become a fact that would need to be determined based on all of the evidence presented."¹³ The Court of Appeals affirmed the Commission's finding that the value set by the County Board in *Kawasaki* was reasonable on the basis of all the evidence.¹⁴ Accordingly, we turn to the evidence presented to determine whether the County Board's valuation was reasonable.
21. The Taxpayer provided evidence using comparable properties she used in a prior appeal to the Commission. She contends that her comparable properties increased in assessed value between 8% and 31.66% whereas the Subject Property increased in assessed value by 38.84%. The Taxpayer provided property record files (PRF) for each of the comparable properties for the 2019 and 2020 tax years. The Taxpayer stated she does not feel this is equalization.
22. Nebraska courts have held that the assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁵ A prior year's assessment is not relevant to the subsequent year's valuation.¹⁶ For this reason, the difference in the changes to the assessed values of the Subject Property and other properties in the neighborhood is only relevant to any specific year's assessment if the difference resulted in values that were not equalized for that assessment year.
23. The Assessor provided a comparable sales report with four comparable properties and the PRF for each property. The report indicates the assessed value of the Subject Property is in line with current market sales in the neighborhood. The Assessor provided the 2019 and 2020 Residential Valuation Methodology for Lancaster County as well. The Assessor stated sales in the neighborhood are strong with sales prices increasing year to year. The

¹¹ *Kawasaki* at 665-666, 70.

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ *Kawasaki* at 666, 70.

¹⁴ *Id.*

¹⁵ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁶ *DeVore, Affiliated Foods*, see also *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

Assessor stated all properties in Lancaster County are valued using mass appraisal techniques.

24. The Commission analyzed the PRF provided by the Taxpayer and the Assessor and found the Subject Property is being valued at \$109.44 per square foot. The median assessed price per square foot of the comparable properties was \$136.14. All the comparable properties were very similar in age, size, quality and condition. The Subject Property has the lowest condition rating to account for the deferred maintenance the Taxpayer stated was still prevalent in the Subject Property. When the Commission analyzed the sales of the comparable properties, all but one of which has sold since 2014, the median sales price of the comparables was \$160.46 per square foot.
25. The Commission finds the Subject Property is being valued less than all the comparable properties in total assessment and in price per square foot. The Commission was not given any evidence to show the Subject Property is being valued unfairly or not equally with other similar properties.
26. 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.
27. The Taxpayer has not adduced clear and convincing evidence that the valuations fixed by the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 and 2020 is: **\$126,600**.
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 (Reissue 2018).
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 years 2019 and 2020.
7. This Decision and Order is effective on May 25, 2021.

Signed and Sealed: May 25, 2021

James D. Kuhn, Commissioner