

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Fortune Builders LLC,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 19R 0287, 19R 0288, 19R 0289
& 19R 0290

**DECISION AND ORDER
REVERSING THE DECISIONS OF THE
LANCASTER COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property consists of four residential parcels improved with single family homes with legal descriptions of: Hartlands Garden Valley 1st Addition, Block 1, Lot 1 (19R 0287), Lot 3 (19R 0288), Lot 4 (19R 0289), and Block 2, Lot 3 (19R 0290).
2. The Lancaster County Assessor (the County Assessor) assessed each of the four parcels of the Subject Property at \$236,300 for tax year 2019.
3. Fortune Builders LLC (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of each of the four parcels of the Subject Property was \$236,300 for tax year 2019.
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 31, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Steven Champoux was present at the hearing for the Taxpayer.
8. Tim Sealock of the Lancaster 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 a determination of the County Board of Equalization is de novo.²

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).

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 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 four parcels of the Subject Property are exactly the same in all ways relevant to these appeals.
17. The Taxpayer asserted that the land component of the Subject Property was over-assessed.
18. The land component of each parcel of the Subject Property was assessed at \$50,000.
19. The lots of the Subject Property all have 40-foot street frontage, which places limits on the size and style of houses that can be built on the lots.
20. The County Board offered evidence of five other properties it deemed comparable to the Subject Property. However, these properties all had street frontage of 50 to 60 feet, as compared to the Subject Property’s 40-foot frontages.
21. Tim Sealock agreed that \$40,000 was a reasonable value for the land component of each parcel of the Subject Property due to the limitations imposed by the smaller lots.
22. 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.

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

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).

23. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is vacated and reversed.
2. The taxable value of each parcel of the Subject Property for tax year 2019 is:

Land	\$ 40,000
<u>Improvements</u>	<u>\$186,300</u>
Total	\$226,300

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 year 2019.
7. This Decision and Order is effective on April 2, 2021.

Signed and Sealed: April 2, 2021

Robert W. Hotz, Commissioner