

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

Robert L. Frerichs,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case Nos: 19R 0363, 19R 0364

**Decision and Order Affirming the  
Decision of the Lancaster County Board  
of Equalization in Case No. 19R 0363**

**Decision and Order Reversing the  
Decision of the Lancaster County Board  
of Equalization in Case No. 19R 0364**

**Background**

1. This Decision and Order applies in all respects only to the taxable value of the Subject Property for tax year 2019.
2. The Subject Property consists of two parcels containing a single residential improvement and a detached garage located at 7300 Ballard Place and 7302 Ballard Place, Lincoln, Lancaster County, Nebraska. Each single-family unit is 986 square feet in size. The residential improvement was built in 1984. The legal descriptions of each parcel are found in the Case Files.
3. The Lancaster County Assessor (the County Assessor) assessed the Subject Property in Case No. 19R 0363, 7300 Ballard Place, at \$110,000.
4. The County Assessor assessed the Subject Property in Case No. 19R 0364, 7302 Ballard Place, at \$110,800.
5. The Taxpayer protested these assessments to the Lancaster County Board of Equalization (the County Board).
6. The County Board determined that the taxable value of the Subject Property in Case No. 19R 0363 was \$110,000, and in Case No. 19R 0364 was \$110,800.
7. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
8. A Single Commissioner hearing was held on March 30, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
9. Robert L. Frerichs (the Taxpayer) was present at the hearing.
10. Pat Dougherty, an employee of the County Assessor, was present for the County Board.

## Applicable Law

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
12. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
13. 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."<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>
14. 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>
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
16. 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>
17. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact & Conclusions of Law

18. The primary issue in dispute in both appeals is the classification of the improvement as a townhouse or as a duplex. The County Assessor classified the improvement as a townhouse; the Taxpayer asserted the improvement should be classified as a duplex.
19. Pat Dougherty stated that typically townhouses are owner-occupied dwellings, whereas duplexes are typically occupied by tenants. The Taxpayer argued that since the two

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>2</sup> 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).

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

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

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<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. 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

separate living units of the Subject Property were both occupied by tenants the improvement on the parcels should be classified as a duplex.

20. The Taxpayer also asserted that since there was only one city water line serving the improvement the classification should be as a duplex, not as a townhouse.
21. The County Assessor utilized a sales comparison approach to determine the actual value of the Subject Property. The sales prices of comparable properties did not persuade the Commission that the taxable value determined by the County Board was arbitrary or unreasonable.
22. No other information provided to the Commission at the hearing amounted to clear and convincing evidence that the County Board determination was arbitrary or unreasonable.
23. At the conclusion of the hearing, the parties agreed to review the record to determine whether a joint stipulation of taxable value could be agreed upon by the parties. The Commission issued an order continuing the matters for 30 days. Within 30 days, both parties advised the Commission in post-hearing document submissions that no stipulation had been reached.
24. In the post-hearing document received from the County Assessor, it is stated, “[i]t is our opinion that 7302 Ballard Place is affected by a CDU (Condition, Desirability, Utility) issue and a cost to cure is required to bring the property to a marketable condition. By adjusting the CDU of this property from Typical to Average Minus, our opinion of value for 2019 decreases from \$110,800 to \$94,800.”
25. In the post-hearing document received from the Taxpayer, the Taxpayer asserted that after the hearing the Assessor offered “to label 7302 Ballard [Place] as a ‘substandard townhouse’ with a value of \$94,100.”
26. We regard the Assessor’s review of the record and revised opinion of value clear and convincing evidence of the taxable value of the parcel in Case No. 19R 0364.
27. In Case No. 19R 0363, the Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions, or clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable. The decision of the County Board should be affirmed.
28. In Case No. 19R 0364, competent evidence was adduced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions, and clear and convincing evidence was provided showing that the determination of value made by the County Board was arbitrary or unreasonable. The decision of the County Board should be reversed.

**ORDER**

**IT IS ORDERED THAT:**

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 19R 0363 is affirmed.
2. The Decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 19R 0364 is vacated and reversed.
3. **The taxable value of the Subject Property for Case No. 19R 0363 is \$110,000.**
4. **The taxable value of the Subject Property for Case No. 19R 0364 is \$94,800.**
5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to the Subject Property for tax year 2019.
9. This Decision and Order is effective on June 11, 2021.

Signed and Sealed: June 11, 2021

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Robert W. Hotz, Commissioner