

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Clayton E. Swartz,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19R 0375

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
LANCASTER COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a residential parcel improved with a 1,222 square foot single-family residence, located at 5400 Rosebriar Court, Lincoln, Nebraska, with a legal description of Briarhurst West Addition, Block 2, Lot 66.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$174,000 for tax year 2019.
3. Clayton E. Swartz (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 \$174,000 for tax year 2019.
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 March 30, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Clayton E. Swartz was present at the hearing for the Taxpayer.
8. Brian Coulter 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 Taxpayer reported that the house has been settling since 2013. The Taxpayer also reported concerns such as the basement floor becoming uneven due to sewer backup and drainage issues affecting the soil. The cost to cure the basement floor defects was \$34,575 to \$37,000 as of 2019.
17. The County Assessor assessed the Subject Property using the cost approach to value. This approach rated the quality of the Subject Property at a “3.00 – Average” and the condition (“CDU”) of the Subject Property at a “3 - Average minus.” The County Assessor applied 42% depreciation based on the property age and these ratings. This condition rating and depreciation account for the defects described by the Taxpayer.
18. The Taxpayer asserted that the Subject Property was over-assessed compared with the sales prices of similar properties, but the Taxpayer did not provide any property record files (PRF) for similar properties to enable the Commission to evaluate this claim.

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).

19. The County Board provided the PRF of three similar properties that had recently sold in the market area of the Subject Property, along with a Comparable Sales Report detailing sale prices and sales adjustments to the comparable properties.
20. The most comparable of the County Board's properties was a property located at 3621 Wildbriar Lane (the Wildbriar Property). The Wildbriar Property is similar to the Subject Property in size, age, and location, and it has the same quality and CDU ratings as the Subject Property.
21. This Wildbriar Property sold on May 30, 2017, for \$155,000. The County Assessor made adjustments to this sale price to account for the Subject Property's larger lot and the lack of a walkout basement on the Wildbriar Property. The adjusted sale price was \$173,000.
22. 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.
23. The Taxpayer has not 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 affirmed.

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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is **\$174,000**.
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