

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

Lori Holle Living Trust,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 19R 0378

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

Background

1. The Subject Property is a residential parcel improved with a 2,669 square foot single family residence with a legal description of Skyline Rolling Hills 4th Addition, Block 4, Lot 8, located at 1801 St. Michaels Road, Lincoln, Nebraska.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$513,800 for tax year 2019.
3. Lori Holle Living Trust (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 \$510,100 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 April 2, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Daniel Fonfara was present at the hearing for the Taxpayer.
8. Brian Coulter and Tim Johns of the Lancaster County Assessor's Office were 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 a determination of the County Board of Equalization is de novo.<sup>2</sup>

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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).

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.”<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 asserted that the Subject Property was assessed at an amount greater than actual value. In support of this assertion, the Taxpayer submitted an appraisal report by Randall D. Bergholz, a Certified Residential Appraiser. The effective date of the appraisal was August 30, 2019, and the appraisal included Bergholz’s certification that the appraisal was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP).
17. The appraisal identified six comparable properties, five of which had recently been sold in the area of the Subject Property, with adjustments to the sales prices to account for specified differences between the comparable properties and the Subject Property. These were used to determine the value of the Subject Property in a sales comparison approach to value. The appraisal did not use the cost approach or the income approach to appraise the Subject Property.
18. In support of the assessed value, the County Board submitted a Comparable Sales Report showing sales of three comparable properties in the area of the Subject Property, with

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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).

<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).

- adjustments to the sale prices. The County Board also submitted the Property Record Files (PRFs) for the comparable properties listed on the Comparable Sales Report.
19. Two of the three comparable properties identified by the County Board were also used as comparable properties in the Appraisal. These were 1821 St. Michaels Rd. and 2021 Winding Ridge Rd.
  20. Bergholz inspected the Subject Property in the course of appraising it. He rated the Subject Property as a Q3 in quality of construction and a C4 in condition. The Comparable Sales Report lists the Subject Property as a 4.00 in quality and a 4 in CDU (condition, desirability, utility).
  21. Bergholz rated 1821 St. Michaels as a Q3 in quality of construction and a C4 in condition. The Comparable Sales Report lists 1821 St. Michaels as a 4.00 in quality and a 4 in CDU.
  22. Bergholz rated 2021 Winding Ridge Rd. as a Q3 in quality of construction and a C3 in condition. The Comparable Sales Report lists 2021 Winding Ridge as a 4.00 in quality and a 4 in CDU.
  23. For quality ratings, Bergholz used a 1-6 scale in which 1 is the highest rating, but the County Assessor used a 1-6 scale in which 6 is the highest rating. Thus, Bergholz's rating of Q3 (the third highest rating available) is equivalent to the County Assessor's rating of 4.00 (the third highest rating available).
  24. For condition ratings, Bergholz used a 1 to 6 scale in which 1 is the highest rating, but the County Assessor used a 0 to 9 scale in which 9 is the highest rating. Bergholz adjusted the sale prices of his comparable properties where the quality and condition ratings differed from those of the Subject Property.
  25. Bergholz generally made smaller net adjustments to the sale prices of his comparable properties than those shown on the Comparable Sales Report, despite the fact that the Comparable Sales Report has all the properties listed at the same quality and CDU ratings as the Subject Property.
  26. Bergholz's mean net adjustment to the sale price of his six comparable properties was \$38,750. The mean net adjustment to the sale price of the three comparable properties shown on the County Assessor's Comparable Sales Report was \$92,850.
  27. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to rebut the presumption in favor of the County Board.<sup>9</sup> Accordingly, we find that the presumption has been rebutted.
  28. Coulter's resume indicates that he was a licensed real estate appraiser in Texas (currently inactive), but it does not list a similar licensure or certification for Nebraska.
  29. The appraisal is more persuasive than the County Board's evidence in several respects. It is a USPAP-compliant fee appraisal report. It was completed by a Nebraska Certified

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<sup>9</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 7, 588 N.W.2d 447 (2013).

Residential Appraiser. It uses six sales comparables and lists the details of the adjustments made to arrive at adjusted sales prices.

30. The County Board's evidence includes values indicated by a cost approach, but the cost approach is not ideal for use in valuing the Subject Property because the Subject Property is neither new nor unusual within the market.<sup>10</sup>
31. The appraisal is the best evidence of the actual value of the Subject Property for tax year 2019.
32. 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.
33. 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 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is \$469,000.
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 8, 2021.

Signed and Sealed: April 8, 2021

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Robert W. Hotz, Commissioner

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<sup>10</sup> See The Appraisal Institute, *The Appraisal of Real Estate* 566 (14<sup>th</sup> ed. 2013).