

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

David A. Cook,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No. 19R 0392

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

Case No. 20R 0585

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

Background

1. The Subject Property consists of a residential parcel of 3.25 acres, improved with a 2,051 square foot residence, located at 9100 Buckboard Drive, Lincoln, Nebraska.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$366,100 for tax year 2019 and \$330,000 for tax year 2020.
3. David A. Cook (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 the Subject Property was \$366,100 for tax year 2019 and \$330,000 for tax year 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 April 2, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. David A. Cook 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.<sup>1</sup>

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

10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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 over-assessed due to structural damage related to soil expansion under the home. The cost to cure this damage would be \$56,100 according to a 2015 estimate.
17. After the 2019 assessment, the County Assessor inspected the Subject Property and changed the condition rating to fair to account for the structural damage. This lowered the assessed value of the Subject Property to \$330,000.
18. Tim Sealock believed that \$330,000 was the actual value for the Subject Property for both 2019 and 2020.

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<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).

19. The Taxpayer believed that the actual value of the Subject Property was \$300,000 for both tax years in issue. However, the Taxpayer did not provide any information to quantify the value of the Subject Property except the cost to cure from the 2015 estimate.
20. In Case No. 19R 0392, 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.
21. In Case No. 19R 0392, clear and convincing evidence was adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated and reversed.
22. In Case No. 20R 0585, the Taxpayer has not adduced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. In Case No. 20R 0585, 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.

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 Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
3. The taxable value of the Subject Property for both tax years 2019 and 2020 is **\$330,000**.
4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective on April 12, 2021.

Signed and Sealed: April 12, 2021

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Robert W. Hotz, Commissioner