

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jack Irons,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 20R 0116

**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 2,218 square foot two-story residence located at 5003 Walker Avenue, in the City of Lincoln, with a legal description of University Place, Block 110, Lot 6.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$183,600 for tax year 2020.
3. Jack Irons (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 \$183,600 for tax year 2020.
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 26, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. The Taxpayer was present at the hearing.
8. Bret Smith, Staff Appraiser for 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 purchased the Subject Property for \$50,000 on July 24, 2019 and rented it to tenants as a single-family residence prior to January 1, 2020.
17. The Taxpayer invested \$30,000 in repairs and renovations to the Subject Property prior to January 1, 2020, including \$25,000 for repairs to the porch and exterior paint, and \$5,000 for interior maintenance and replacements.
18. The assessed value of the Subject Property increased from \$85,600 for tax year 2019 to \$183,600 for tax year 2020. The Taxpayer asserted that this increase was excessive and inconsistent with the 2019 purchase price of the Subject Property.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ A prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
20. The purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes; however, standing alone, it is not conclusive of

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).

⁹ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl’s Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

¹⁰ *Id.*

the actual value of property for assessment purposes.¹¹ The statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.¹²

21. The information presented at the hearing indicates that multi-tenant residences have lower market values than single-family residences. Prior to 2020, the Subject Property was assessed as a multi-tenant property, but beginning with tax year 2020, the Subject Property was assessed as a single-family residence.
22. The County Board provided property record files (PRFs) for three comparable single-family properties in the same neighborhood as the Subject Property, along with a Comparable Sales Report showing recent sales prices of the three comparables at \$95.09, \$73.44, and \$110.29 per square foot.
23. The Subject Property is assessed at \$82.78 per square foot,¹³ which is within the range of per square foot values of the comparable single-family properties.
24. 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.
25. 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 Lancaster County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is **\$183,600**.
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 2020.
7. This Decision and Order is effective on March 30, 2021.

Signed and Sealed: March 30, 2021

Robert W. Hotz, Commissioner

¹¹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

¹² *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999).

¹³ \$183,600 assessed value ÷ 2,218 square feet = \$82.78 per square foot.