

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

PHYLLIS HANSEN,
APPELLANT,

CASE NO: 22A 0008

V.

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

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an agricultural parcel improved with a combined barn/apartment building in Lancaster County, parcel number 13-30-400-015-000.
2. The Lancaster County Assessor (the County Assessor) in 2022 provided valuation changes to the Lancaster County Board of Equalization (the County Board) regarding the Subject Property for tax years 2015 through 2021, asserting the Subject Property contained omitted property. The County Board adopted the changed assessed values.
3. Phyllis Hansen (the Taxpayer) protested the 2015-2021 valuation changes to the County Board.
4. The County Board upheld the increased valuations on March 15, 2022, resulting in total valuations of \$176,500 for tax year 2015, \$179,500 for tax year 2016, \$186,400 for tax years 2017 and 2018, \$205,600 for tax year 2019, \$215,200 for tax year 2020, and \$230,300 for tax year 2021.
5. The Taxpayer appealed this determination of the County Board to the Tax Equalization and Review Commission (the Commission).

6. A Single Commissioner hearing was held on November 7, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Jay & Phyllis Hansen were present at the hearing for the Taxpayer.
8. Dan Zieg, Tim Sealock & Sue Bartek were present for the County Board.

II. 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
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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 759 N.W.2d 464, 473 (2009).

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

⁴ *Id.* at 283-84.

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer stated they are not protesting the county's determination of value for tax year 2022, but rather the county's increased valuations for tax years 2015-2021.
17. The Taxpayer testified they purchased the Subject Property in 2014 for \$215,000. This price is reflected on a copy of the Real Estate Transfer Statement Form 521 signed by the Taxpayer on June 16, 2014.
18. The Form 521 reflects a property status of unimproved. However, the Taxpayer did note the property type as "single family" as opposed to "agricultural" or "recreational."
19. There are two buildings on the Subject Property one of which is a combined barn/living area building.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

20. The County Board argues the portion of the combined barn/living area building that is living area is omitted property, and per Neb. Rev. Stat. § 77-1317, the County Board may correct the assessment roll to reflect that omitted property.
21. The County Board stated it believed the combined barn/living area building to be just an outbuilding with no living space. The County Board also asserted no permits were requested or issued to convert any outbuilding space into living area. It is unclear if the Subject Property was built with the living area or if a portion of the building was converted into living area at a later date.
22. The Taxpayer testified they had purchased the Subject Property with the living area, as they intended to reside in the living area portion of the building. The County Board presented no evidence to rebut the Taxpayer's assertion.
23. The County Board provided the Property Record Files (PRFs) for the Subject Property for tax years 2015-2022. The PRFs for the Subject Property show, among other information, the historical valuation of the Subject Property. Unfortunately, the County has revised the historical valuation data to reflect only the values approved by the County Board on March 15, 2022, without showing "a complete history of each incremental adjustment or change made within an assessment year to the assessed value of the parcel ... including the nature of the change and an indication of the assessment body or official ordering the change".⁹ Therefore, the Commission cannot see the historical value and basis for the Subject Property as it was prior to March 15, 2022.
24. The PRFs provided by the County Board values two outbuildings and the living area which is a portion of one of the outbuildings. The combination living area and outbuilding were listed as constructed in 2014, with the remaining outbuilding listed as constructed in 1996. The PRFs also show a picture of

⁹ Title 350 Neb. Admin. Code, ch. 10 §005.01B(5) (10/14).

the Subject Property that appears to be the combined barn/living area building, with a photograph date of February 15, 2013. It is unclear from the photograph whether the living area was present at the time the photograph was taken, but the improvement itself was present. It is also unclear why there is not a picture of the second outbuilding.

25. The County Board admitted the land and outbuildings had been assessed from 2015-2021.
26. The PRFs show the County Assessor performed a field review of the Subject Property after the 2014 sale, with aerial reviews in 2018 and 2019. The County Board asserts the living area was not discovered until 2021.
27. Omitted property is defined as “any taxable real property that was not assessed on... March 25.” It is also defined as “any taxable real or tangible personal property that was not assessed for any prior year.”¹⁰
28. Undervalued and overvalued property is defined as “any taxable real property that is assessed by the county assessor but has a taxable value lower or higher than other taxable property with which it is required to be equalized.”¹¹
29. Here, the County Board admits the land and structures present on the Subject Property had been assessed for tax years 2015-2021.
30. Because the land and structures had been previously assessed, the Commission finds the increase in valuation due to the discovery in 2021 of use as a living area within the structure, cannot meet the definition of omitted property as a matter of law.
31. Instead, the facts and circumstances presented indicate the increased valuations are more accurately described as undervalued property, rather than omitted property.

¹⁰ Neb. Rev. Stat. § 77-123 (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-124 (Reissue 2018).

32. The adjustment of undervalued property is controlled by Neb. Rev. Stat. § 77-1504. This statute allows a county board to meet “on or after June 1 and... on or before August 10... to consider and correct the current year’s assessment of any real property which has been undervalued or overvalued.”¹²
33. However, a county board adjusting undervalued or overvalued property is limited to adjustments to the current assessment year only.¹³
34. Because the 2015-2021 valuation adjustments were not omitted property but instead a correction of the assessment of undervalued property, the Commission finds the Lancaster County Board of Equalization lacked statutory authority to issue its March 5, 2022, decision increasing the valuation of the Subject Property for tax years 2015 through 2021.
35. 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.
36. 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 vacated.

IV. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board of Equalization increasing the taxable value of the Subject Property for tax years 2015 through 2021 is vacated and reversed.
2. The previous valuations of the Subject Property, prior to the County Board’s March 15, 2022, action, shall be reinstated.
3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster

¹² Neb. Rev. Stat. § 77-1504 (Reissue 2018).

¹³ *Id.*

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 2022.
7. This Decision and Order is effective on December 13, 2023.

Signed and Sealed: December 13, 2023



James D. Kuhn, Commissioner