

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

Kelly & Alan Muthersbaugh  
Appellant,

v.

Lancaster County Board of Equalization  
Appellee

Case No: 12R 783

Decision Reversing Lancaster  
County Board of Equalization

1. A Single Commissioner hearing was held on September 9, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Kelly Muthersbaugh (Taxpayer) was present at the hearing.
3. Alice Lauer was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,728 square foot single family dwelling, with a legal description of: Lot 13, Block 15, Fox Hollow Second Add, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$172,300 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization and requested an assessed value of \$167,000 for tax year 2012.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$172,300 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>1</sup> "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."<sup>2</sup>

<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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>
11. 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>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
13. 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>
14. The Taxpayer asserted that the Subject Property had increased in value from 2011 to 2012 \$10,700 while some properties in the Fox Hollow Second Addition had decreased.
15. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>8</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>9</sup>
16. The Taxpayer listed four alleged comparable properties. She explained that she had been in Comp #1 located at 8200 Prescott Ave, and that it has the same floor plan and built by the same builder as the Subject Property. She noted that it had had some windows replaced and has permanent siding. She noted that the valuation decreased from 2011 assessment date to 2012 assessment date from \$161,100 to \$160,000. She also noted that the alleged comparable property was assessed at \$89.43 per square foot and the Subject Property was assessed at \$99.71. She did not provide the Commission with property records of the alleged comparable property. She noted that two of the alleged comparable properties had also decreased in value and one had increased in value, but was much smaller. She noted the differences in the assessed value square foot costs. It is noted that three are less than the Subject Property and one is more.
17. The Taxpayer asserted that she had the Subject Property appraised in 2009 for refinancing. She noted that it did not appraise for as much as the current assessment and

---

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>9</sup> *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

was denied a loan. She did not provide the Commission with the appraisal because of the age of the appraisal. It was her opinion the Subject Property would not have sold on January 1, 2012 for more than \$167,000. She notes that the cost approach for the Subject Property by the County was \$167,440 and is of the opinion that would be a more appropriate valuation.

18. The Appraiser from Lancaster County noted that she had done an interior inspection of the Subject Property. She made several corrections on the property record card and used properties she believed were more comparable to the Subject Property than the comparable properties used by the County Board of Equalization. Her opinion of actual value for the property was \$171,800 after the inspection. The Commission puts great weight on the Appraiser's opinion of value.
19. 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.
20. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated.

#### ORDER

##### IT IS ORDERED THAT:

1. The Decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012, is Vacated and Reversed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$ 45,000
<u>Improvements</u>	<u>\$126,800</u>
Total	\$171,800

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 (2012 Cum. Supp.)
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 2012.
7. This Decision and Order is effective on September 11, 2013.

Signed and Sealed: September 11, 2013

---

Nancy J. Salmon, Commissioner