

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

H Gareth Rees,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 13R 554

Decision and Order Affirming the  
Determination of the Lancaster  
County Board of Equalization

1. A Single Commissioner hearing was held on August 14, 2014, 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. H Gareth Rees (the Taxpayer) was present at the hearing.
3. Tim Johns, an Appraiser with the Lancaster County Assessor’s Office, was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,171 square foot single family dwelling, with a legal description of: Lot 8, Block 1, Quail Valley, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$146,400 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$125,000 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$134,700 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board 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

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<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).

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>

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 assessed values of sold properties exceeded their sale prices. He asserted that the valuations are arbitrary and capricious along with the valuation of the Subject Property.
15. The Taxpayer provided the Commission with an analysis of sold properties in the Subject Property’s neighborhood and asserted that several sold for more than the assessed value. He asserted that the Subject Property should be assessed at \$125,000 to \$126,000 using the sale price of 5000 S 54<sup>th</sup> St, which sold in July 18, 2012, for \$125,000, and 5021 S 54<sup>th</sup> St, which sold in January 2013, for \$129,000 and again in December 30, 2013, for \$145,000.
16. The alleged comparable properties provided by the Taxpayer ranged in size and basement finish. Comparable properties share similar use (residential, commercial industrial, or

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<sup>2</sup> *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) (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).

agricultural), physical characteristics (size, shape, and topography), and location.<sup>8</sup> The Commission finds that the properties included in the Taxpayer's alleged comparable properties are not truly comparable.

17. According to Nebraska Statute §77-1371, “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.” Further, generally accepted mass appraisal techniques require that after selecting comparable sales, the assessor must “[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable.”<sup>9</sup>
18. Without quantified adjustments to the comparable properties for all of the different physical characteristics, the Taxpayer's assertions based upon the comparison of the alleged comparable properties and the Subject Property are given little weight.
19. The County Appraiser's opinion of value was \$146,400. He explained that the Taxpayer had not allowed an inspection of the Subject Property, and without an inspection, he was unable to determine if different comparable properties could be used using the sales comparison approach. He noted that the County Board's determination relied upon a referee who used a comparable property listing and not an actual sale price to arrive at an opinion of value of \$134,700.
20. 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.
21. 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 affirmed.

## ORDER

### 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 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 48,000
<u>Improvements</u>	<u>\$ 86,700</u>
Total	\$134,700

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<sup>8</sup> See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

<sup>9</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-02.

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 2013.
7. This Decision and Order is effective on August 18, 2014.

Signed and Sealed: August 18, 2014

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Nancy J. Salmon, Commissioner