

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

D. Scott Steen,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 574

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

1. A Single Commissioner hearing was held on February 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 Robert W. Hotz.
2. D. Scott Steen (the Taxpayer) was present at the hearing.
3. Daniel Gibson, an employee of the Lancaster County Assessor (Assessor) was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a 2,484 square foot income-producing duplex located at 6111 Briar Rosa Drive, in Lincoln, Lancaster County, Nebraska. The legal description of the Subject Property is found in the Case File.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$185,400 for tax year 2012.
6. The Taxpayer protested this value to the County Board.
7. The County Board determined that the taxable value of the Subject Property was \$160,800 for tax year 2012.
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.¹ "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."²

¹ 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).

² *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.”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
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.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
14. Scott Steen asserted that the determination by the County Board resulted in a 9% increase from tax year 2011.
15. Steen provided a spreadsheet showing details relating to multiple properties he asserted were comparable to the Subject Property. Six of these properties had sold sometime in calendar years 2007 to 2012. Steen provided no property record files for any of these properties from which to determine their comparability to the Subject Property, as ordered by the Commission.
16. Steen asserted that economic factors he referred to as “the housing bubble,” were not adequately accounted for in the determination, but he provided no basis for a quantification of these factors to show any effect on the actual value of the Subject Property as of January 1, 2012.
17. Daniel Gibson explained that the Assessor assessed the Subject Property using an income approach generated by the use of computer-assisted mass appraisal (CAMA) software. He explained that for tax year 2012, the Assessor had employed an income approach, rather than a sales comparison approach, to value duplexes in the County, using a gross rent multiplier (GRM). According to Gibson, the Assessor had concluded that the sales comparison approach, used through tax year 2011, needed to be corrected.
18. Using a GRM, the Assessor valued the Subject Property at \$185,400.
19. The County Board offered no other evidence of taxable value.

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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. 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).

20. The Commission finds that 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.
21. The Commission also finds that the Taxpayer has not 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 2012, is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is \$160,800.
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 February 18, 2014.

Signed and Sealed: February 18, 2014.

Robert W. Hotz, Commissioner