

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

Pat K. Klausen,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 12R 649

Decision 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 Salmon.
2. Pat K. Klausen (the Taxpayer) was present at the hearing.
3. Tim Sealock, Appraiser for Lancaster County Assessor’s Office, was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,292 square foot single family dwelling, with a legal description of: Lot 5, Block 5, Knob Hill Addition, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the subject property at \$128,900 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization.
7. The Lancaster County Board of Equalization determined that the assessed value of the subject property was \$128,900 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

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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 Subject Property was overvalued for Tax year 2012. He asserted that no other properties in his neighborhood were selling for less than their assessed value. He did not provide the Commission with any sales or property record cards for the alleged sales.
15. The Taxpayer provided the Commission with a document from the Lancaster County Board of Commissioners stating that the Subject Property had been valued by the Lancaster Board of Equalization for \$116,300 for tax year 2013.
16. The difference in assessed valuation from year to year is not indicative of an inappropriate assessed value.<sup>8</sup> The valuation from a subsequent year is irrelevant to the assessed valuation of a previous year.<sup>9</sup>
17. The Appraiser from Douglas County explained that the Subject Property had been valued using the sales comparison approach. He stated that the Taxpayer had not allowed an

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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).

<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> See, *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).

inspection of the Subject Property and without an inspection would not be able to make an adjustment to the 2012 valuation.

18. The County Assessor indicated that he was unable to determine if the County Board value from 2013 was reasonable and supported by relevant market data for tax year 2013.
19. The County Assessor indicated he would need to inspect the Subject Property in order to determine if the 2013 value was supported by data, or to make any adjustments to the comparable used to value the Subject Property through the sale comparison approach.
20. The Taxpayer refused any offers to have the Subject Property inspected.
21. The Commission finds that without the property records cards and sales transactions of alleged comparable properties the Taxpayer's assertions are not clear and convincing evidence.
22. 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.
23. 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 value of the subject property for tax year 2012, is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 30,000
<u>Improvements</u>	<u>\$ 98,900</u>
Total	\$128,900
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.

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Nancy J Salmon, Commissioner