

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Tom D. Keller,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 855, 13R 544

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

Procedural Background

1. A Single Commissioner hearing was held on June 17, 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. Tom D. Keller and Lisa R. Keller were present at the hearing.
3. Jeff Johnson, an employee of the Lancaster County Assessor (the Assessor) was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an 18.57 acre rural residential parcel improved with a 1,636 square foot home and four outbuildings. The legal description is in the Case File.
5. For tax year 2012, the Assessor assessed the Subject Property at \$217,500.
6. The Taxpayer protested this value to the County Board. The County Board determined that the taxable value of the Subject Property was \$217,500 for tax year 2012.
7. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
8. For tax year 2013, the Assessor assessed the Subject Property at \$226,300.
9. The Taxpayer protested this value to the County Board. The County Board determined that the taxable value of the Subject Property was \$226,300 for tax year 2012.
10. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Applicable Law

11. 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

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).

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

12. 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
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Analysis

17. The 18.57 acre parcel included a 1,636 square foot residence, four outbuildings which together total 9,300 square feet of outbuilding area, a 1.52 acre home site, and 17.05 acres of agricultural and horticultural land receiving special valuation.
18. The Taxpayer paid \$240,000 for the Subject Property on April 29, 2004, and put in a new basement under the house in 2005.
19. The Taxpayer asserted that the condition of the Subject Property was fair, not average as assessed. But the Taxpayer has not allowed an internal inspection of the home.
20. The Taxpayer asserted that the property valuation increase from tax year 2011 to tax year 2012 was too high when it increased from \$196,500 to 217,500, and was also too high when it increased from \$217,500 for tax year 2012 to \$226,300 for tax year 2013.
21. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the

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

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).

⁸ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

subsequent year's valuation. It follows that the percentage increase from the prior year assessment is not determinative of the subsequent year's assessed valuation.¹⁰

22. The Taxpayer did not dispute the allocation of value to the land component of the Subject Property.
23. The Assessor included the Subject Property in neighborhood 3500N, a rural residential area in rural Northwest Lancaster County. The Assessor utilized three comparable properties from neighborhood 3500N to compare to the improvements of the Subject Property. Each of these three properties sold sometime between July 1, 2009, and June 30, 2011. The Assessor analyzed these sales and made adjustments to the comparable properties to account for the differences between them and the Subject Property. After making these adjustments, the Assessor determined the market value of the improvements of the Subject Property. The Assessor's methodology is an approved means to determine the actual value of the Subject Property.
24. The Taxpayer argued that the Assessor did not appropriately take into account the differences between comparable properties and the Subject Property.
25. The Taxpayer provided property record cards for six additional parcels which the Taxpayer argued should have been used as comparables. The Taxpayer asserted these properties were closer in proximity to the Subject Property than were the Assessor's comparables. The County Board argued that the properties offered by the Taxpayer were less comparable to the Subject Property than were the comparables utilized by the Assessor. The Taxpayer did not make any adjustments to account for the differences between these six parcels and the Subject Property. Without making these adjustments, the comparable properties are not useful in determining the actual value of the Subject Property.
26. 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.
27. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary.
28. The determinations by the County Board for both tax years 2012 and 2013 should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The decision of the County Board determining the taxable value of the Subject Property for tax year 2012 is as follows:

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

Land	\$ 40,500
Improvements	<u>\$ 177,000</u>
Total	\$ 217,500

- The decision of the County Board determining the taxable value of the Subject Property for tax year 2013 is as follows:

Land	\$ 49,300
Improvements	<u>\$ 177,000</u>
Total	\$ 226,300

- 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.).
- Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
- Each Party is to bear its own costs in this proceeding.
- This decision shall only be applicable to tax years 2012 and 2013.
- This order is effective on June 20, 2014.

Signed and Sealed: June 20, 2014

Robert W. Hotz, Commissioner