

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Todd A. Ellis,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 528 & 13R 323

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

1. A Single Commissioner hearing was held on March 11, 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. Todd A. Ellis (the Taxpayer) was present at the hearing.
3. Jeff Johnson, 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 rural residential parcel improved with a 1,495 square foot single family dwelling and a 1,440 square foot farm utility building, with a legal description of: Lot 4, Block 1, Yankee Hill Lake 1st Add, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$272,400 for tax years 2012 and 2013.
6. The Taxpayer protested these values to the Lancaster County Board of Equalization.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$272,400 for tax year 2012 and 2013.
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.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

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. The Taxpayer asserted that the Subject Property was overvalued for both tax years 2012 and 2013. He provided the Commission with spreadsheets and alleged comparable properties including properties in the Subject Property’s neighborhood, sales of homes he alleged as comparable to the Subject Property, and homes built the same time and of a similar total area as the Subject Property.
15. The Taxpayer asserted that the land was overvalued because of the Subject Property’s location and setbacks. He noted on the map that the farm utility building could only be built in one area in order to be in compliance.
16. The Appraiser from the County agreed that an adjustment should be made on the land portion of the valuation. His opinion of value for the land for both 2012 and 2013 was \$25,000. The Commission gives great weight to the opinion of the Appraiser and finds that the taxable value of land portion of the Subject Property should be \$25,000.
17. The Taxpayer asserted that the Subject Property was valued higher per square foot than any of the alleged comparable properties. He provided several property records and spreadsheets. The Commission notes that he included the land valuation in his figures.

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).

The Commission has reviewed all the alleged comparable properties and finds that the improvements on the properties vary in size, basement finish, CDU (Condition, Desirability and Utility), location, quality, and outbuildings. The Commission also notes that as the size increases, the per square foot decreases.

18. The Appraiser noted that comparable properties located in the city could not be compared to rural acreages as the market is not similar. The Commission does note that a comparable located at 3747 SW 16th is a rural acreage the same as the Subject Property and when adjusted for not having a farm utility building is valued at a similar per square foot value.
19. The Taxpayer's argument may be summarized as an assertion that the Subject Property was not equalized. The Taxpayer supported this assertion by comparing the per square foot assessed value of alleged comparable properties and the Subject Property.
20. A per square foot comparison of the assessed values of a subject property and comparable properties indicating that the substantially similar properties were valued at materially different levels would establish that the principles uniformity and equalization had been violated. However, comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁸
21. The Commission finds that most of the Taxpayer's alleged comparable properties are not truly comparable, and that the most comparable property was valued at a similar level of value per square foot.
22. Without evidence of the assessed values of comparable properties, equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the Subject Property and comparable property.⁹ This requires assertions indicating the actual value of the Subject Property and comparable properties, and then analysis of the proportion of the actual value of comparable properties and the Subject Property assessed for ad valorem tax purposes (i.e. an assertion that comparable properties were assessed at 90% of actual value while the Subject Property was assessed at 100% of actual value).
23. Comparison of the assessed per square values of properties alone is insufficient to meet the standard for equalization as the issue is whether or not there is a difference between the portion of the Subject Property's actual value taxed and the portions of comparable properties' actual value taxed.
24. While the Taxpayer provided multiple properties records indicating the assessed values for properties, the Taxpayer did not provide any evidence of the ratio of actual to assessed values for these same properties.
25. Based upon the material presented to the Commission, the Commission finds that that the Subject Property is equalized with other properties.
26. The Commission finds the actual value of the Subject Property for tax years 2012 and 2013 is \$247,900. (land value \$25,000 and improvement value \$222,900.)
27. 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.

⁸ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

28. 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 decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2012 and 2013 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 25,000
<u>Improvements</u>	<u>\$222,900</u>
Total	\$247,900

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 March 14, 2014.

Signed and Sealed: March 14, 2014

Nancy J. Salmon, Commissioner