

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lucille E. McCall
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 13R 568

Decision and Order Reversing Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on March 24, 2015, 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. Lucille E. McCall (the Taxpayer) was present at the hearing.
3. Alice Lauer, Appraiser for 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 1,388 square foot single family residence and utility building, with a legal description of: Lot 1, W 536.8” E 836.8” N 734” & Ex 30’ N 136’ S 657” Grandview Heights, Lincoln, Lancaster, Nebraska.

Background

5. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$496,500 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$250,000 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$405,900 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.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) (2014 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 Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Subject Property was annexed into Lincoln City on April 20, 2012. Following the annexation the assessed value of the Subject Property increased by over 100%.
16. The Taxpayer asserted that the increase is unreasonable or arbitrary because development activities occurring on property located across the street and harmed the Subject Property and required her to replace the drive way at a cost of \$7,000.
17. The Taxpayer also asserted that the neighboring property was assessed at a lower actual value and that the Subject Property should be equalized with the neighboring property. The Taxpayer did not provide a property record card for the neighboring property.
18. The Appraiser for Lancaster County explained that the assessed value of the Subject Property increased drastically between tax year 2012 and 2013 because the Subject Property had received special valuation prior to tax year 2013. After the Subject Property was annexed into Lincoln, the Subject Property no longer qualified for special valuation. She was unable to explain the County Board’s determination.

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) (2014 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) (2014 Cum. Supp.).

19. However, the Appraiser presented a new opinion of value at the hearing. The County Assessor did an interior and exterior inspection of the Subject Property. She noted that the dwelling was dated and that that would affect the market value. She also equalized the land valuation with several properties in the Subject Property's neighborhood. Her new opinion of valuation for January 1, 2013 was Land Value \$224,000, Improvement value \$122,600 for a total valuation of \$346,600. The Commission gives great weight to the Appraiser's opinion of value and finds the market value to be \$346,600.
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 vacated.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$224,000
<u>Improvements</u>	<u>\$122,600</u>
Total	\$346,600

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 (2014 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 March 26, 2015.

Signed and Sealed: March 26, 2015

Nancy J. Salmon, Commissioner