

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

Arlen R. Fass,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 15R 0150 & 16R 0348

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a residential parcel, with a legal description of: Blk 11, Lots 1-2, N 10', Hickman, Lancaster County, Nebraska.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$67,700 for tax years 2015 and 2016.
3. The Taxpayer protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of unknown for tax years 2015 and 2016.
4. The County Board determined that the taxable value of the Subject Property was \$67,700 for tax years 2015 and 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on November 16, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
7. Arlen R. Fass (Taxpayer) was present at the hearing.
8. Lyman Taylor, Appraiser for Lancaster County Assessor's Office, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
11. 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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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). "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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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>

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

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the Subject Property was overvalued for tax years 2015 and 2016 due to deferred maintenance issues. According to the statement of the Taxpayer, items needing maintenance include the following: cracks in the house’s foundation, hail damage to the roof and siding occurring in 2015, the lack of a working central air conditioning system, broken window in the garage, bath tub in bathroom badly stained and lack of working faucets, and the patio and storm doors need replacing. The Taxpayer provided recent photographs substantiating the needed maintenance items. Mr. Fass indicated that a new roof would cost approximately \$6,500, but he did not quantify any other costs.
17. The appraiser for the County noted that according to the Taxpayer’s statement, his roof does not leak. The appraiser also explained to the Taxpayer and the Commission that he had taken the deferred maintenance issues into consideration when valuing the property. He stated that an adjustment has previously been made for the deferred maintenance, including the lack of a working air conditioning unit. He also indicated that the sales comparison approach was used to value the Subject Property with the deferred maintenance adjustment.

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<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(9) (2014 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> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

18. Neither the Taxpayer nor the appraiser was able to quantify how much the deferred maintenance issues would affect the market value of the Subject Property. A taxpayer is required to introduce competent evidence of actual value of his property in order to successfully claim that such property is overvalued. Such proof must be provided by clear and convincing evidence.
19. 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.
20. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable, and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2015 and 2016, is Affirmed.
2. The taxable value of the Subject Property for tax years 2015 and 2016 is:

Land	\$18,000
<u>Improvements</u>	<u>\$49,700</u>
Total	\$67,700

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 years 2015 and 2016.
7. This Decision and Order is effective on November 22, 2016.

Signed and Sealed: November 22, 2016.

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Nancy J. Salmon, Commissioner