

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Clinton E. Fass,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 15R 0149 & 16R 347

Decision and Order Affirming Lancaster
County Board of Equalization

Background

1. The Subject Property is a rural residential parcel, with a legal description of: Lot 37 NE 34-7-8, 10.01 acres, Lancaster, Nebraska.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$129,200 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 \$129,200 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. Clinton E. Fass (Taxpayer) was present at the hearing.
8. Tim Sealock, Appraiser for Lancaster County Assessor, 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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.”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

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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the Subject Property was overvalued for tax years 2015 and 2016 due to the poor condition of the residential structure. He indicated that a significant amount of maintenance on the property has been deferred for several years. Specifically, he stated that the house’s foundation needs replacement at an estimated cost of \$20,000. In addition, he noted that the windows are in need of replacement, the dwelling has had hail damage, and the porch roof needs to be replaced. The Taxpayer continues to live in the house.
17. The appraiser for the County Assessor provided information regarding the methodology utilized in assessing the Subject Property. He stated that he used the sales comparison approach by utilizing three comparable sales of property in the area. First, however, he placed a CDU (condition, desirability, and utility) rating on the Subject Property. The CDU assigned to the property was a “2” which is the lowest possible rating for a house which is still livable. He then compared the Subject Property to the three comparable properties after making a large adjustment for the low CDU rating. Using this approach, he valued the property at \$129,200. The appraiser also noted that he has placed no value on the outbuildings situated on the Subject Property. It should also be noted that the

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(9) (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.).

appraiser did not actually inspect the interior of the Subject Property as the Taxpayer did not allow him to do so.

18. The evidence submitted by the Taxpayer does indicate a residential property in need of significant repair. However, the Taxpayer did not submit information or even an opinion as to actual value of the structure. The Commission is unable to quantify a value based upon the data submitted by the Taxpayer.
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 year 2015 is:

Land	\$ 58,500
<u>Improvements</u>	<u>\$ 70,700</u>
Total	\$129,200

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

Nancy J. Salmon, Commissioner