

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

Linda R. Evans Living Trust, Paul D. Evans,  
Trustee,

Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 15R 0077

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

Background

1. The Subject Property contains a 1,174 square foot residence located at 5710 Logan, Lincoln, Lancaster County, Nebraska. The legal description of the Subject Property is located in the Case File.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$103,000 for tax year 2015.
3. The Taxpayer protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$99,400 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$103,000 for tax year 2015.
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 September 21, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Paul D. Evans was present at the hearing.
8. Tim Sealock and Bret Smith, employees of the Lancaster County Assessor, were 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>

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<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

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 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 Subject Property included a 1,174 square foot single family one-story bungalow built in 1900. The property included a full basement, of which 850 square feet had minimal finish. The Subject Property also included a 576 square foot detached garage. The improvements were rated by the County Assessor as average quality and typical condition.
17. The County Assessor assessed the Subject Property as part of a particular neighborhood of properties, identified as 7LNE221 – Havelock – Low, which presumably only included properties with the same quality and condition as the Subject Property.
18. Tim Sealock conducted an internal inspection of the Subject Property on March 8, 2016, and previously on March 1, 2013. Sealock stated that the characteristics and condition of the property were materially unchanged from the dates of the two inspections. Paul Evans agreed with that observation.

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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).

<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.).

19. Sealock also stated that the County Assessor conducted a revaluation of residential properties for tax year 2015, which accounted for the increase in taxable value in 2015 as compared to the prior three years.
20. According to the property record card, the County Assessor used the sales comparison approach to value the Subject Property. In the revaluation of residential properties for tax year 2015, sales occurring in 2013 and 2014 were used to determine the assessed values for comparable properties that did not sell.
21. Paul Evans argued that comparable properties were assessed more favorably than the Subject Property. Evans provided property record cards for more than two dozen properties located near the Subject Property.
22. The Commission has reviewed each of the property record cards provided in this proceeding for purposes of an equalization analysis. The Commission focused on properties with the most similar physical characteristics, including the same quality and condition as the Subject Property.
23. Many of the property record cards provided by Evans were also assessed as part of the same neighborhood grouping (7LNE221 – Havelock – Low) as the Subject Property. However, four of the properties were assessed in a different neighborhood grouping (8NE02 – Havelock – DVDU) presumably because they were duplex, triplex, or conversion apartment units, and six other properties were assessed in neighborhood grouping 7MNE032 – Havelock.
24. One property from neighborhood 7MNE032 – Havelock has the same quality and condition ratings as the Subject Property, but the assessed value is unknown because only one page of the property record card was provided.
25. Of the remaining property record cards, only two had the same quality and condition ratings as the Subject Property. However, one of the two was not the same property type, as it was a 1½ story bungalow, rather than a one-story bungalow.
26. Of all of the property record cards provided for the hearing, the most comparable property to the Subject Property was across the street from the Subject Property at 5711 Logan Avenue. That property was the only property that shared the same quality and condition ratings from the same neighborhood as the Subject Property. Its property record card indicated that the property had sold on June 16, 2010 for \$76,000. The same property was assessed for tax year 2015 at \$73,500.
27. However, there were significant differences between the Subject Property and 5711 Logan Avenue. The Subject Property had 1,174 square feet of gross living area; 5711 had 912 square feet of gross living area. The Subject Property had a 576 square foot two stall garage; 5711 Logan Avenue had a 480 square foot one-car garage. The Subject Property had a 1,174 square foot basement, with 850 square feet of minimal finish; 5711 Logan Avenue had no basement. Consequently, having superior characteristics in gross square footage, garage stalls, basement, and minimally finished basement space, the Subject Property was assessed at \$103,000 as compared to the assessment of 5711 Logan

Avenue at \$73,500. There is sufficient reason to conclude that the Subject Property should have been assessed at a higher value than 5711 Logan Avenue. Evans did not present any evidence to quantify why the difference in value between the two properties should have been less than as assessed for tax year 2015.

28. 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.
29. 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 year 2015 is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$103,000.
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 2015.
7. This Decision and Order is effective on September 23, 2016.

Signed and Sealed: September 23, 2016

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Robert W. Hotz, Commissioner