

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

Allen C. Wellman,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 17A 0170

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel of 35.31 acres improved with a single family dwelling and 2 farm utility buildings, with a legal description of: S23 T10 R7, 6<sup>th</sup> Principal Meridian, Lot 23 NW.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$667,900 for tax year 2017.
3. Allen C. Wellman (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$667,900 for tax year 2017.
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 June 19, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Tim Sealock (the 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) (2016 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 stated that his property is used as a hay farm which produces brome grass and alfalfa. He stressed that his property should be valued as Ag land. The County provided a property record card for this parcel showing that the Subject Property is currently being valued as Ag land. The Taxpayer stated that he entered into an agreement not to put this parcel into row crop production and receives a small payment for this agreement.
17. The Taxpayer feels as though the increase in value to his home is exorbitant and does not feel it should increase such a large percentage in just one year. He stated the Subject Property is 25 years old and has not been updated on the interior since it was built. The Taxpayer doesn’t agree that the County’s comparable properties are truly comparable to the Subject Property. The Taxpayer provided values of a number of neighboring properties, some of which have sold, and compared his percentage increase in value to the increase or decrease in value of those properties. No property record cards were provided for any of these parcels leaving in question the comparability of these properties. The County argued that the properties provided by the Taxpayer were not improved with a near-3,000 square foot home like the Subject Property.

---

<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) (2016 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) (2016 Cum. Supp.).

18. The Taxpayer argued that the impending condemnation of some of his land along Holdrege Street should lower his assessment as well. Over 130 pine trees are to be removed to construct a 60 inch waterline. Lancaster County has informed the Taxpayer what they will pay him for the land and trees, but that value was not stated at the hearing. The Taxpayer feels access will be an issue once this process is started, however, the project has been delayed indefinitely. The effect this project may have on the value of the Subject Property is still unknown.
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 year 2017, is Affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$158,100
<u>Improvements</u>	<u>\$509,800</u>
Total	\$667,900

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 (2016 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 2017.
7. This Decision and Order is effective on June 25, 2018.

Signed and Sealed: June 25, 2018

---

James D. Kuhn, Commissioner