

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

Janet L. Woolsoncroft,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 17R 0301

Decision and Order Reversing the Lancaster  
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,639 square foot home located at 8730 Augusta Circle, in Lincoln, Lancaster County, Nebraska. The legal description of the parcel is HIMARK ESTATES ADDITION, BLOCK 2, LOT 5.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$438,100 for tax year 2017.
3. Janet Woolsoncroft (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$438,100 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 Robert W. Hotz.
7. The Taxpayer and her husband James Woolsoncroft were present at the hearing.
8. Tim Johns, Senior Staff Appraiser for the 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.<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) (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).

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 two primary arguments of the Taxpayer included 1) that the assessed value of the Subject Property had been increased \$82,400 from the prior tax year, and 2) that the assessment did not adequately account for the presence of a utility pole in the backyard of the Subject Property as well as a utility easement running the length of the back yard, which burdened the desirability and utility of the residential property.
17. As to the Taxpayer’s first argument, the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>10</sup>
18. The Taxpayer stated at the hearing that the property was purchased at auction in 2007 for \$350,000.
19. The Taxpayer provided numerous documents to be considered by the Commission, including, among other things, a letter from Bruce Robbins, with Home Real Estate,

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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) (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.).

<sup>9</sup> See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

dated July 2, 2007, stating in part that, “it is my belief that the major deterrent to the sale of this property is the power pole in the back yard,” and enclosing a listing history indicating that “it was consistently withdrawn or cancelled after substantial time on the market”; a letter from Nancy Pekny, with Home Real Estate, dated July 2, 2007, stating in part that the Subject Property was listed 573 days before it sold to the Taxpayer and that, “[t]his would be an excellent home except for the big electric pole in the back”; photographs from multiple angles, showing the presence of the utility pole in relation to the Subject Property; a letter dated June 15, 2018, from Lincoln Electric System (LES), indicating that the pole stands 100 feet above grade, the transmission lines operate at 115,000 volts, the easement is 70 feet wide, and the house was built within the easement; an agreement between LES and the owner of the property, executed September 18, 2001, wherein the owner agreed, at the expense of the owner, to remove that portion of the back deck which then extended into the easement, and not to build or plant trees within the easement. The Taxpayer asserted that the base of the pole was approximately 35 feet from the edge of the concrete patio at the back of the house.

20. The Commission finds that the presence of the utility pole and easement substantially burden the desirability and utility of the Subject Property.
21. Tim Johns explained to the Commission that the County Assessor believed that adjustments should be made to account for the pole and easement. First, the land component of the property was adjusted by 10%, from \$80,000 to \$72,000. Second, Johns asserted that it would be appropriate to reduce the CDU (Condition/Desirability/Utility) rating from Average Minus to Fair. As a result, Johns gave his opinion that the improvement value should be lowered from \$366,100 to \$323,200. It was Johns’ opinion that after making adjustments for the presence of the pole and the utility easement, the assessed value of the Subject Property should be \$395,200.
22. Janet Woolsoncroft stated that her opinion of the value of the Subject Property for tax year 2017 was \$374,850.
23. Neither party provided any sales of any comparable residential property that had a similar presence of a pole and utility easement.
24. The Commission is persuaded that adjustments should be made to account for the presence of the pole and the utility easement, but other than what has been suggested above, the Commission has no legal or factual basis to quantify any further adjustments.
25. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. Clear and convincing evidence has been adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated and reversed.<sup>11</sup>

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<sup>11</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 72,000
<u>Improvements</u>	<u>\$ 323,200</u>
Total	\$ 395,200

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 (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 21, 2018.

Signed and Sealed: June 21, 2018

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Robert W. Hotz, Commissioner