

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ruth E. & Marlin E. Rauscher,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 042

Decision and Order Reversing Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on October 25, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Ruth E. & Marlin E. Rauscher (Taxpayers) were present at the hearing.
3. Chris Benson, a residential assessor with the Lancaster County Assessor's Office, was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,206 square foot single family ranch dwelling, with a legal description of: Lot 46, & W ½ Vac Alley Adj, Cherry Hill Place, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$115,900 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization and requested an assessed value of Unknown for tax year 2012.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$115,900 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "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."²

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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.”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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Taxpayer asserted that the three comparable properties used by the Lancaster Assessor’s Office to value the Subject Property for January 1, 2012, were not comparable to the Subject Property because they are located in different areas. The Subject Property is located across the street from a hospital and power plant and on a busy street, whereas the three comparable properties are located in residential areas and several miles away. He also asserted that the Subject Property had been increased in value for 2012 and two of the comparable properties had decreased.
15. The Taxpayer’s opinion of value for the Subject Property was calculated by adding 5% to the 2011 valuation.
16. The Appraiser for the county informed the Commission that the Subject Property’s neighborhood had been subject to a reappraisal for the tax year 2012 and the previous year’s valuation had not been taken into consideration.
17. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁸ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.⁹
18. The Taxpayer asserted that the information for the Subject Property had been listed incorrectly.

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(8) (2012 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 See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

⁹ *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

19. The Appraiser for the County stated that he had done an interior and exterior inspection for the Subject Property. He stated that he made a correction to the finished area square feet in the basement and CDU because of the location and unique characteristics of the Subject Property for this neighborhood. He also noted that he used a different comparable property for his analysis.
20. Benson gave a revised opinion of value for the Subject Property for January 1, 2012 of \$109,800. The Commission gives great weight to the Appraiser's opinion of value.
21. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be reversed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012, is Vacated and Reversed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$ 21,000
Improvements	\$ 88,800
Total	\$109,800

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 (2012 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 2012.
7. This Decision and Order is effective on October 28, 2013.

Signed and Sealed: October 28, 2013

Nancy J. Salmon, Commissioner