

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Virginia M. Ellis,
Appellant,

v.

Lancaster County Board of Equalization ,
Appellee.

Case No: 12R 229

Decision and Order Reversing Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on October 30, 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. Virginia M. Ellis (Taxpayer) was present at the hearing.
3. Timothy Sealock, Appraiser for Lancaster County Assessor’s Office, was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a single family residential parcel improved with a 3,069 square foot 2 story with unfinished attic dwelling, with a parcel ID number of 17-32-100-022-000 located at 4242 South Street, Lincoln, Lancaster, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$345,000 for tax year 2012.
6. The Taxpayer protested this value to the Lancaster County Board of Equalization and requested an assessed value of \$211,826 for tax year 2012.
7. The Lancaster County Board of Equalization determined that the assessed value of the Subject Property was \$345,000 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

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).

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

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 Subject Property had been valued with properties in the Mt Emerald District when it was located in the Bryan Fair View District. She asserted that the properties in the Emerald District were in a better location and would not have the same market value as the properties in the Subject Property’s neighborhood. The Taxpayer provided the Commission with a spreadsheet listing four comparable sales she alleged to be better comparable properties than the comparable properties the county used to assess the Subject Property as of January 1, 2012. The spreadsheet lists adjustments for the sales, but it is unknown how the adjustments were derived. The Commission notes that there are differences in the comparable properties in quality, CDU rating, square foot, and several of the physical characteristics. The Taxpayer arrived at her opinion of value by averaging the sale price per square foot of the 4 sales after application of her adjustments.
15. The Appraiser from the County explained to the Commission that comparable property number one was not a good comparable as it had a new addition and has been completely

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

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).

renovated after the sale. It was his opinion that at the time of the sale, it was not comparable to the Subject Property.

16. According to Nebraska Statute §77-1371, “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.” Further, generally accepted mass appraisal techniques require that after selecting comparable sales, the assessor must “[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable.”⁸
17. The Commission finds that while the Taxpayer attempted to make some adjustments to the comparable properties, there was no evidence that the quantification of these adjustments was the result of any professionally accepted mass appraisal method. The Taxpayer did not make adjustments for some important differences in physical characteristics. Without quantified adjustments to the comparable properties for all of the different physical characteristics, the Taxpayer’s assertions based upon the comparison of the alleged comparable properties and the Subject Property are given little weight.
18. The Appraiser explained to the Commission that he did a physical inspection of the Subject Property on March 7, 2013 and made several changes. He provided the Commission with the Property Record Card listing the changes and explained that he now was assessing the Subject Property in the Bryan Fair View neighborhood and found different comparable properties than used for the January 1 assessment. His new opinion of value for January 1, 2012 is \$276,600. The Commission gives great weight to the Appraiser’s opinion and agrees that the valuation of the Subject Property for January 1, is 276,600.
19. 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.
20. 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 vacated.

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:
- 3.

⁸ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-02.

Land	\$ 76,200
Improvements	\$199,400
Total	\$276,600

4. 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.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2012.
8. This Decision and Order is effective on November 6, 2013.

Signed and Sealed: November 6, 2013

Nancy J. Salmon, Commissioner