

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Arlen R. Fass,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 809

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. Arlen R. Fass (Taxpayer) was present at the hearing.
3. Lyman Taylor, Appraiser from Lancaster County Assessor’s Office, was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,167 square foot single family one story dwelling, with a parcel ID 15-33-211-001-000 located at 413 Maple Street, Hickman, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$77,900 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 \$77,900 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

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 was overvalued for January 1, 2012 because of the deferred maintenance. He noted that the central air conditioning unit did not work and the furnace was 26 years old. He asserted that some of the windows needed replaced, there were cracks in the basement walls, windows and carpet needed to be replaced and the kitchen and bathroom needed updating. He asserted that it would cost between \$20,000 to \$30,000 to fix the deferred maintenance. He stated that he had received an estimate to put in new windows and a patio door and that alone would cost approximately \$15,000. He noted that he had moved in a detached garage and opined that it did not add any value to the Subject Property.
15. The Appraiser from the County explained the property record for the Subject Property to the Taxpayer and Commission and noted that there was no value assigned to the detached garage. He also stated that he had asked the Taxpayer to do an interior and exterior inspection of the Property so he could address the deferred maintenance, but the Taxpayer had denied an inspection. The Taxpayer also denied an inspection at the time of the hearing.

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).

16. The Assessor, in order to accurately describe these critical characteristics must inspect the subject property. This conclusion is supported by the Nebraska Supreme Court which has determined that “(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain.”⁸ Given this mandate, where the Taxpayer refuses the County’s request to inspect the property, the provisions of the Adverse Inference Rule are triggered.⁹ The provisions of this rule may be summarized as follows: where the Taxpayer refuses to allow the County to inspect the subject property, after challenging the assessed value as determined by the County, there is a presumption that the results of the inspection would militate against the Taxpayer’s interest. The finder of fact is the sole judge of what probative force to give the fact that the Taxpayer refused the County’s request to inspect the property. Furthermore, that the relative convincing powers of the inferences to be drawn from that fact is for the determination of the finder of fact.
17. The Appraiser explained that the Subject Property had been valued using the Sales Comparison Approach to value. He was unable to quantify how much the deferred maintenance would affect the actual value of the Subject Property. He did quantify that without Central Air Conditioning the market value would be reduced \$5,000 according to the sales he has analyzed.
18. The Commission gives great weight to the Appraiser’s opinion and finds that the taxable value for the Subject Property for January 1, 2012 should be \$72,900. (\$77,900 - \$5,000=\$72,900)
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:

⁸ *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 582-83, 144 N.W.2d 161, 169 (1966).

⁹ *See Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

Land	\$18,000
Improvements	\$54,900
Total	\$72,900

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 (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 November 5, 2013.

Signed and Sealed: November 5, 2013.

Nancy J. Salmon, Commissioner