

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Scott T. Lubischer,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee

Case No: 12R 787

Decision Affirming Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on September 9, 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. Scott T. Lubischer (Taxpayer) was present at the hearing.
3. Jeff Johnson was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is rural residential parcel improved with a 3245 square foot single family dwelling, with a legal description of: Lot 26 NE, 15-12-6, Lancaster, Nebraska containing 20 acres.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$437,900 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 \$437,900 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 an 11 percent increase from tax year 2011 to tax year 2012 was a reason for concern. Lubischer was only concerned with the improvement value, because the land value is assessed as special value.
15. 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
16. The Taxpayer did not agree with the alleged comparable properties the county had used to value the Subject Property for 2012. The County assessed the Subject Property using the sales comparison approach. The Taxpayer asserted that the three comparable properties used by the county to set the Subject Property value were located in South Lancaster County, whereas the Subject Property is located in the North Part of Lancaster County. It is his opinion that a property in North Lancaster County would sell for 10 to 15 percent less than one located in South Lancaster County.
17. The Appraiser from the County stated that the market from South to North could be different for acreages, but was unable to quantify the differences. He noted that they only use market value properties for comparables when valuing rural residential properties.
18. The Taxpayer provided property record cards for 4 alleged comparable properties. He noted that all of them were located in North Lancaster County close to the Subject

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).

Property. He asked that the Subject Property's improvement value be equalized with the 4 comparable properties.

19. The alleged comparable properties provided by the Taxpayer ranged in size, basement finish, quality, CDU rating, and outbuildings. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰ The Commission finds that the properties included in the Taxpayer's alleged comparable properties are not truly comparable. Additionally, the Taxpayer did not provide any evidence of the ratio of actual to assessed values of the alleged comparable properties.
20. The Taxpayer was in disagreement with the County quality rating of Good for the Subject Property. When the Subject Property's improvements were constructed, he was the general contractor and completed some of the labor. He stated that he had tried to save costs and did not use good quality materials throughout the Subject Property. He noted the floor coverings, kitchen cabinetry and windows were of a lesser quality along with several other items.
21. The County Appraiser agreed that the quality may not be good, but without an inspection, would not be able to make an adjustment in the quality. He stated that several of the exterior characteristics of the Subject Property such as the roof lines and fenestration on the back of the house would be typical in a good quality dwelling. The Taxpayer asserted that the inside of the dwelling looked substantially cheaper than the exterior. The Appraiser stated he would be unable to determine a lesser quality without an interior inspection. The Appraiser stated that he had requested an interior inspection, but the Taxpayer is often out of town and they had not been able to arrange a time that was convenient. He did not quantify the difference between good quality as opposed to average.
22. While relevant, the Taxpayer's assertions that the quality is incorrect are not clear and convincing evidence of the actual value of the Subject Property, where, as in this case, the evidence indicates that the Subject Property's characteristics could support either a good or average quality rating. The Taxpayer declined an opportunity to recess the hearing so that the County Assessor could inspect the Subject Property. In this case the Taxpayer has only illustrated a difference of opinion with the County Appraiser.¹¹
23. The Taxpayer stated that a fee appraisal had been done on the Subject Property. He did not provide a copy for the Commission's review. He noted that since the land was green belt, an appraisal would only show the market value. He also stated that the improvement value was lower than \$376,000 on the appraisal.

¹⁰ See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

¹¹ *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)) (reasoning that a mere difference of opinion is not clear and convincing evidence).

24. The Taxpayer's opinion was that the improvement value of \$318,600 as assessed to the Subject Property for tax year 2011 was a fairer value and also closer to his building costs.
25. The Appraiser for the County stated the market value for the building was \$376,000 for 2012.
26. 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.
27. The Taxpayer has not 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 affirmed.

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 Affirmed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$ 61,900
<u>Improvements</u>	<u>\$376,000</u>
Total	\$437,900

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 September 11, 2013.

Signed and Sealed: September 11, 2013

Nancy J. Salmon, Commissioner