

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Marvin E Svoboda Living Trust, Marvin E Svoboda, Trustee
Appellant,

v.

Lancaster County Board of Equalization
Appellee

Case No: 12R 846

Decision Affirming Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on September 16, 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. Marvin E Svoboda was present at the hearing for Marvin E Svoboda Living Trust (Taxpayer).
3. Tim Sealock was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1503 square foot ½ story single family dwelling, with a legal description of: Lot 18, Block 2, Lakeside, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$132,700 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 \$132,700 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 value of the Subject Property increased from \$91,400 for tax year 2011 to \$132,700 for tax year 2012. He asserted that the only change to the Subject Property was a new ½ bath in the basement. He asserted that the actual value did not increase \$41,300.
15. The County Appraiser explained to the Taxpayer that Lancaster County did a reappraisal for 2012 that would affect the Subject Property, and, as part of that reappraisal had changed the condition of the Subject Property from fair to average. The County Appraiser noted that the roof had been replaced.
16. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁸ For this reason, where changes to the Subject Property occur, a prior year’s assessment is not relevant to the subsequent year’s valuation.⁹
17. The Taxpayer asserted that the comparable properties used by the County in the Sales Comparison Approach to arrive at the value of the Subject Property were not comparable. He noted that the comparable properties included full two story houses, but the Subject

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).

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 was only a 1 ½ story. He explained that his ceilings upstairs were low and prevented occupants from equipping the rooms with normal furniture in part of the upstairs.

18. The County Appraiser noted that he had not been allowed an interior inspection of the Subject Property and could not change the square feet of the upstairs without the opportunity to measure. He also noted that he could not find better comparable properties for the Subject Property without a walk through.
19. 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.”¹⁰ Given this mandate, where the Taxpayer refuses the County’s request to inspect the property, the provisions of the Adverse Inference Rule are triggered.¹¹
20. 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.
21. The Taxpayer provided the Commission with a client summary report. Using those 3 sales, it was his opinion that the Subject Property would sell closer to \$100,000. The real estate agent was not available to ask questions regarding the sales. The Taxpayer stated that the Subject Property was in better condition than two of the sales. He noted that the three alleged comparable properties were located within his neighborhood.
22. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. 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:

¹⁰ *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 582-83, 144 N.W.2d 161, 169 (1966).

¹¹ *See Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

Land	\$ 24,000
<u>Improvements</u>	<u>\$108,700</u>
Total	\$132,700

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 25, 2013.

Signed and Sealed: September 25, 2013

Nancy J. Salmon, Commissioner