

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard L. Garcia,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 12R 053, 13R 199, 14R 049

Amended Decision and Order Affirming
Lancaster
County Board of Equalization
(Case Number)

1. A Single Commissioner hearing was held on August 12, 2014, 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. Richard L. Garcia (the Taxpayer) was present at the hearing.
3. Jeff Johnson, Appraiser from Lancaster County Assessor’s Office, was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is rural residential property improved with a 3.934 square foot two- story single family dwelling, with a legal description of: Lot 2, West Haven Addition, Containing 9.24 Acres, Lancaster, Nebraska.

Background

5. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$334,900 for tax years 2012, 2013, and 2014.
6. The Taxpayer protested these values to the County Board and requested an assessed value of \$275,000 for tax years 2012, 2013 and 2014.
7. The Lancaster County Board determined that the taxable value of the Subject Property was \$334,900 for tax years 2012, 2013 and 2014.
8. The Taxpayer appealed the determination of the County Board 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 tax years 2012, 2013, and 2014. His first concern was that the FAA has moved the airport radar facility to land directly to the west of the Subject Property. He provided a photograph of the facility for the Commission’s review. He did not quantify what effect the facility would have on the market value of the Subject Property.
15. The Taxpayer’s second concern was that there had been a change in zoning for the Subject Property and area surrounding the Subject Property. The changed resulted in the area being zoned s an “Airport Environs Noise District.” He asserted that he would be legally required to notify prospective buyers of the Subject Property about this change.
16. The County Appraiser noted that in a market study of properties within the Subject Property’s area, he was unable to determine that change in zoning would negatively impact the actual value of the Subject Property.
17. The Taxpayer also noted that Williams Pipeline has an easement running across the Subject Property making the Subject Property unsuitable for a future subdivision.
18. The Taxpayer asserted that the three comparable properties used by the County Assessor in their sales comparison approach were not in the same location as the Subject Property and that location was one of the most important factors in determining the actual value of

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).

the Subject Property. He provided the Commission with the tax notices of two alleged comparable properties. He noted one was across the street from the Subject Property and had decreased in value since 2008. The second alleged comparable was a sale the county used in their sales comparison approach and noted it had decreased since 2008. He noted that the Subject Property had increased in value since 2008. His opinion of value using these two alleged comparable properties was \$275,000 to \$285,000. He noted that the Subject Property was valued at \$303,950 in 2008 and should have decreased by 2% per year because of the economic depreciation.

19. 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
20. The County Appraiser explained that the Subject Property had been assessed using the Sales Comparison Approach. He noted that adjustments had been made to the sales because of size, location, CDU, and amenities.
21. The Taxpayer also asserted that the Subject Property was not 100% complete as of tax years 2012-2014. The County Appraiser noted that a 10% adjustment had been given to the Subject Property's improvement value in 2011. The Taxpayer asserted that nothing more had been completed. The Taxpayer declined the offer by the County to recess the hearing and confirm the 10% adjustment should be made for tax years 2012-2014.
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 determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the Lancaster County Board of Equalization determining the taxable value of the Subject Property for tax years 2012, 2013, and 2014 are affirmed.
2. The taxable value of the Subject Property for tax years 2012, 2013, and 2014 is:

Land	\$ 72,000
<u>Improvements</u>	<u>\$262,900</u>
Total	\$334,900

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

⁹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944); *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

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 years 2012, 2013, and 2014.
7. This Decision and Order is effective on August 18, 2014.

Signed and Sealed: August 18, 2014

Nancy J. Salmon, Commissioner