

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Pat Klausen,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 14R 655

Decision and Order Affirming
County Board of Equalization

1. A Single Commissioner hearing was held on May 20, 2016, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Steven A. Keetle.
2. Pat Klausen (Taxpayer) was present at the hearing.
3. Tim Sealock was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a 1,292 square foot residential property located at 1433 Pawnee, Lincoln, NE, with a legal description of: Knob Hill Addition, Block 5, Lot 8, Lincoln, Lancaster County, Nebraska

Background

5. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$128,900 for tax year 2014.
6. The Taxpayer protested this value to the Lancaster County Board and requested a lower assessed value for tax year 2014.
7. The Lancaster County Board determined that the taxable value of the Subject Property was \$128,900 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.² “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. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2014 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.”³

11. 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.”⁴ 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.”⁵
12. 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.⁶
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
16. The Taxpayer alleged that comparable properties located in the same area as the Subject Property were selling for less than their assessed values.
17. The Taxpayer did not bring any information regarding comparable sales located in the same area as the Subject Property for the Commission to review.
18. The Taxpayer alleged that the assessed value of the Subject Property increased too much from the prior year’s assessed value.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹¹
20. The Taxpayer did not produce competent evidence to rebut the presumption that the County Board had faithfully performed its official duties and had acted on sufficient competent evidence to justify its actions with regard to the Subject Property.

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁰ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ 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).

21. The Taxpayer did not adduce clear and convincing evidence that the determination of the County Board was 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 taxable value of the Subject Property for tax year 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 30,000
<u>Improvements</u>	<u>\$ 98,900</u>
Total	\$128,900

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 (2014 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 2014.
7. This Decision and Order is effective on May 27, 2016.

Signed and Sealed: May 27, 2016.

Steven A. Keetle, Commissioner