

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

J. R. Schupbach,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case Nos: 15R 0148 & 16R 0281

Decision and Order Affirming Lancaster  
County Board of Equalization

Background

1. The Subject Property is a residential parcel, with a legal description of: Blk 6, Lot 14 & N ½ Vac E-W Alley Adj., Sheridan Place, Lincoln, Lancaster County, Nebraska.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$39,000 for tax years 2015 and 2016.
3. The Taxpayer protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$11,310 for tax years 2015 and 2016.
4. The County Board determined that the taxable value of the Subject Property was \$39,000 for tax years 2015 and 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on November 16, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Nancy J. Salmon.
7. J. R. Schupbach (Taxpayer) was present at the hearing.
8. Ryan M. Swaroff, Deputy Lancaster County Attorney, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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). “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.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer’s sole contention is that a “Permanent Injunction” issued by the District Court of Lancaster County on April 12, 2011 (Case No. CI 10-4022) so adversely affects the value of the Subject Property such that its market value has been destroyed. A copy of the Permanent Injunction was provided to and considered by the Commission. The injunction grants a permanent injunction in favor of the City of Lincoln, and against the Taxpayer, enjoining the Taxpayer from maintaining the Subject Property in violation of the Lincoln Municipal Code provisions relating to keeping the property neat, orderly, and in safe condition. The injunction contains the following language: “This injunction shall be binding upon the Defendant only.” The Taxpayer contends that the injunction negatively affects the value of his property because it “goes with the property.”
17. The Subject Property was assessed by the County Assessor at \$39,000. The valuation was for the land only as a zero value was placed on the residential structure situated upon the land. The Taxpayer requests a reduction to \$11,310 based upon his analysis of the Nebraska Court of Appeals decision in *Alderman v. County of Antelope*, 11 Neb.App. 412 (2002). As a result of the Court’s decision in that case which precluded an expansion

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

of a dairy operation, the value of the dairy farm was reduced by 71%, according the Taxpayer's argument.

18. Upon review of the Permanent Injunction pertaining to the Taxpayer, the Commission finds that the injunction is permanent as to the Taxpayer only, and does not run with the land. Accordingly, it does not affect the value of the Subject Property, should he decide to sell. The Taxpayer's contention that the *Alderman* case supports his valuation request is misplaced. The Commission finds that the aforementioned case is irrelevant to the disposition of the case pending before the Commission.
19. 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.
20. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2015 and 2016, is Affirmed.
2. The taxable value of the Subject Property for tax years 2015 and 2016 is:

Land	\$39,000
<u>Improvements</u>	<u>\$0</u>
Total	\$39,000

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 years 2015 and 2016.
7. This Decision and Order is effective on November 22, 2016

Signed and Sealed: November 22, 2016

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Nancy J. Salmon, Commissioner