

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael D. Shea,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 12R 1116

Decision and Order Reversing Lancaster
County Board of Equalization

1. A Single Commissioner hearing was held on November 25, 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. Michael D. Shea (the Taxpayer) was present at the hearing.
3. Daniel P. Gibson, Appraiser for Lancaster County Assessor’s Office was present for the Lancaster County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,722 one story duplex, with a legal description of: Lot 8, S 75’ & Lot 9, Block 12 East Lawn Terrace, Lincoln, Lancaster County, Nebraska.

Background

5. The Lancaster County Assessor assessed the Subject Property at \$106,000 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 \$106,000 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 provided the Commission with photos of the Subject Property taken in 2009 and an invoice dated May 17, 2010. He noted that the invoice was a bid from a contractor to fix a water problem in the Subject Property’s basement.
15. The Taxpayer purchased the Subject Property in May 2009 for \$67,500 from a realtor.
16. He asserted that the property sat on the market for over a year because of water damage in the basement. He stated that he had painted the outside of the duplex, put in two concrete pads, refinished two of the hardwood floors, and did some cosmetic work in the basement because of the water damage. He asserted that the basement leaks whenever there is a large rain and that would affect the market value of the Subject Property.
17. The Appraiser asserted that he had not done an interior inspection of the Subject Property. The Taxpayer asserted that he did not feel like an inspection would be appropriate at this time for January 1, 2012 purposes as he has done some work in the basement to cover up the water damage. The Appraiser explained that the Subject Property had been valued using the income approach. He stated that the Subject Property had been valued using typical market rents for similar properties in average minus CDU.

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).

He stated that after review of the photos and the information provided by the Taxpayer, a Fair CDU may be more appropriate. He was unable to quantify the differences in the model and stated that he could not make a change without an interior inspection of the basement.

18. The Taxpayer asserted that the value of the Subject Property would be more on January 1, 2012 than he paid in May 2009, but because of the water problem, would not sell for the assessed value until the water problems are addressed. His opinion of market value as of January 1, 2012 was \$87,500.
19. The Property record card indicates that a cost valuation and income valuation were performed on the Subject Property. The Commission notes that the Cost Valuation would be \$107,299 and the income valuation would be \$106,080.
20. Because the Appraiser was unable to quantify the difference in CDU from average minus to fair, the Commission would address the cost to cure the water problem in the basement of \$20,000 using the cost approach and finds the valuation of the dwelling to be \$66,469 (86,469 – 20,000). The land valuation of \$20,800 is added and the valuation for 2012 is \$87,269. (66,469 + 20,800= 87,269)
21. 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.
22. The Taxpayer has 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 vacated.

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 Vacated and Reversed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$ 20,800
<u>Improvements</u>	<u>\$ 66,469</u>
Total	\$ 87,269

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 November 27, 2013.

Signed and Sealed: November 27, 2013.

Nancy J. Salmon, Commissioner