

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kenny Garris,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 0804

Decision and Order Affirming the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is a commercial parcel with a 7,622 square foot building, with a legal description of: Lands Sec-Twn-Rge 11/14/12 –Ex S 25 Ft –Irreg W 139.53 E 856.50 Ft S of MPRR Tx Lt 4 S ½ NW ¼, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$314,000 for tax year 2015.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$54,900 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$314,000 for tax year 2015.
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 September 18, 2017, at the Omaha State Office Building, 1313 Farnam, Thirt Floor, Room E, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Monte Bowman and Benjamin White were present at the hearing for Kenny Garris (Taxpayer).
8. Keith Nielsen of the Douglas County Assessor/Register of Deeds office 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 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).

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

Findings of Fact & Conclusions of Law

16. The Taxpayer offered information regarding county record and protest procedures for tax years prior to tax year 2015.
17. The Taxpayer alleged that the Subject Property was over assessed and that the assessed value was not equalized with other comparable properties.
18. Monte Bowman indicated that the Subject Property was only used for parking and that he thought it was insured for \$57,000 for tax year 2015.
19. Mr. Bowman stated that there were structural issues with the chimney due to a high concentration of iron pyrite that caused lightning to strike the chimney and that the roof of the building leaked, but did not offer any evidence to quantify the impact of these characteristics on the condition rating or value of the Subject Property.
20. The Taxpayer offered no other evidence of value for the Subject Property.
21. The County indicated that the Subject Property was valued using the income approach and market data for commercial property in Douglas County including market sales, market rents, market expenses and quality and condition of properties.

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(9) (2016 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 Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

22. The County presented the Property Record File (PRF) that contained the Commercial Income Worksheet setting forth how the assessed value was arrived at for the Subject Property.
23. The PRF also contained a listing of all industrial commercial sales used to calibrate the County's income model.
24. 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.
25. 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 year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 18,100
<u>Improvements</u>	<u>\$295,900</u>
Total	\$314,000

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2015.
7. This Decision and Order is effective on December 8, 2017.

Signed and Sealed: December 8, 2017.

Steven A. Keetle, Commissioner