

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kelley J. Baldwin,
Appellant,

Case No: 15R 0274

v.

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

Douglas County Board of Equalization,
Appellee.

Background

1. The Subject Property is a 1,722 square foot ranch residential property, with a legal description of: The Highlands Rep 2 Lot 17 Block 0 Irreg. Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$313,500 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 \$280,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$313,500 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 February 1, 2018, at the The Omaha State Office Building, 1313 Farnam, Third Floor, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kelley J. Baldwin and David Harrington were present at the hearing (Taxpayer).
8. Larry Thompsen with the Douglas County Assessor/Register of Deeds Office (County Appraiser) 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
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

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).

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 alleged that the increase in the assessed value of the Subject Property from tax year 2014 to 2015 was too high compared to the change in value for other properties near the Subject Property.
17. The Taxpayer failed to produce the Property Record Files (PRF) for other properties near the Subject Property that would indicate the basis for the assessments for these other properties.
18. The PRF for the Subject Property indicates that it was reappraised by the County Assessor for tax year 2015
19. While the information presented indicted a different percentage change in value for several nearby properties it does not indicate whether these properties were reappraised by the County Assessor for tax year 2015.
20. The Taxpayer stated that the per square foot assessed value of the Subject Property was higher than other comparable properties.
21. The Taxpayer discussed differences between the Subject Property and other nearby properties such as walkout basements while the Subject Property does not have a walkout basement and location of the properties in relation to the Subject Property.

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 Taxpayer did not produce the PRF for the other properties that were alleged to be comparable to the Subject Property.
23. The information presented does not quantify the value attributed to the different characteristics of the alleged comparable properties (i.e. walkout basement, basement finish, plumbing adjustments, etc) to determine the comparability of these properties to the Subject Property or to make adjustment to the assessed values to make them comparable to the Subject Property.
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	\$ 25,000
<u>Improvements</u>	<u>\$288,500</u>
Total	\$313,500

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 April 30, 2018.

Signed and Sealed: April 30, 2018

Steven A. Keetle, Commissioner