

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Victor E. Stannish,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0233

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

Background

1. The Subject Property is a 2,460 square foot ranch style residential property, with a legal description of: St Andrews Pointe Lot 43 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$468,800 for tax year 2016.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$422,200 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$468,800 for tax year 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 February 2, 2018, at the Omaha State Office Building, 1313 Farnam, Third Floor Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Victor E. Stannish was present at the hearing (Taxpayer).
8. Larry Thomsen of the Douglas County Assessor/Register of Deeds Office (the 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

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 asserted that the Subject Property should be assessed at the same per square foot amount as the property across the street from the Subject Property.
17. The property across the street from the Subject Property is a two-story residence while the Subject Property is a ranch style residence. The Subject Property has a larger basement and no second floor living area. The property across the street from the Subject Property is not comparable to the Subject Property.
18. Additionally, the Property Record File (PRF) for the property across the street from the Subject Property was not presented to the Commission to allow it to determine the impact of differences in characteristic between the property across the street from the Subject Property and the Subject Property.
19. The Taxpayer asserted in the alternative that the Subject Property should not be assessed at a higher per square foot amount than the highest assessed recently sold property in the neighborhood of 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.).

20. The PRF of the highest assessed recently sold property in the neighborhood of the Subject Property was not presented to the Commission to allow it to determine the impact of differences in characteristic between the Subject Property. The Commission is unable to determine the comparability of the highest assessed sold property in the neighborhood of the Subject Property to the Subject Property.
21. The Taxpayer presented a list of sales prices of recently sold properties located in the same neighborhood as the Subject Property. The PRF's for these sold properties were not presented to the Commission, and without these records the Commission is not able to determine the comparability of these sold properties to the Subject Property.
22. The County Board presented the PRF for the Subject Property which set forth the basis for the assessed value of the Subject Property for tax year 2016.
23. The County Appraiser, after reviewing the information presented at the hearing as well as the information contained in the PRF for the Subject Property stated that his opinion of value for the Subject Property as of the assessment date would be \$438,100.
24. Based on all of the information presented to it finds that the assessed value of the Subject Property as of the assessment date should be \$438,100.
25. 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.
26. The Taxpayer has 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 vacated.

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 2016, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 34,000
<u>Improvements</u>	<u>\$404,100</u>
Total	\$438,100

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 2016.

7. This Decision and Order is effective on May 3, 2018.

Signed and Sealed: May 3, 2018

Steven A. Keetle, Commissioner