

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John R. Bowen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0282

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

Background

1. The Subject Property is a two story residential property, with a legal description of: Fire Ridge Estates, Lot 106 Block 0 75x120, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$444,100 for tax year 2016.
3. John R. Bowen (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$388,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$444,100 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 August 9, 2018, at the Omaha State Office Building, 1313 Farnam, Rm. E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, 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
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 Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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 assessed value of the Subject Property was higher than the actual value of the Subject Property for tax year 2016.
17. The Taxpayer offered statements and information about the Subject Property as of the assessment date.
18. The County Board presented the PRF for the Subject Property, which sets forth the basis for the assessed value of the Subject Property for tax year 2016.
19. 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 \$421,278.
20. The Taxpayer offered statements and information regarding ten recent sales of comparable properties in the same neighborhood as the Subject Property, which, accounting for differences in amenities, indicated that the actual or fair market value of the improvements on the Subject Property as of the assessment date would be \$348,500.
21. The Taxpayer and the County Appraiser agreed that the value of the land component of the Subject Property would be \$38,000 for tax year 2016.

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 Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 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. Based on all of the information presented, the Commission finds that the actual or fair market value of the Subject Property as of the assessment date should be \$348,000 for the improvements and \$38,000 for the land, for a total value of \$386,500.
23. The Taxpayer alleged that the Subject Property was not assessed uniformly and proportionally with comparable properties and should have an equalized value of \$355,400.
24. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”⁹
25. The record before the Commission does not demonstrate that the valuation on the Subject Property was grossly excessive when compared to valuations placed on similar properties when using an actual or fair market value of \$386,500 for the Subject Property rather than the \$444,100 value determined by the County Board.
26. The Taxpayer alleged that because the assessed value for the Subject Property in tax year 2017 was \$355,400 that the assessed value for tax year 2016 should be \$355,400.
27. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹¹ For this same reason, the Commission finds that a subsequent year’s assessment is not relevant to the prior year’s valuation.
28. The PRF or other information regarding the calculation of the 2017 assessed value to relate that to the 2016 tax year at issue in this appeal was not presented to allow the Commission to further evaluate the Taxpayer’s allegation regarding the 2017 assessment of the Subject Property.
29. 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.
30. 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.

⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁰ See *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 38,000
<u>Improvements</u>	<u>\$348,500</u>
Total	\$386,500

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 2016.
7. This Decision and Order is effective on December 21, 2018.

Signed and Sealed: December 21, 2018

Steven A. Keetle, Commissioner