

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard L. Erben,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0381

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

Background

1. The Subject Property is a 1,092 square foot split entry property, with a legal description of: Hummingbird Heights Lot 46 Block 0 Irreg E 15.4 ft Lot 45 & Irreg W 42 ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$113,000 for tax year 2016.
3. Richard L. Erben (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$113,000 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 16, 2018, at the Omaha State Office Bulidng, 1313 Farnam St., Rm 227, Omaha, Nebraska, before Commissioner Steven A. 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

¹ Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

² Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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 alleged that the condition of the Subject Property was not in line with that of the surrounding properties.
17. The Taxpayer presented pictures of the interior and exterior of the Subject Property including the original windows, siding, floor coverings, wallpaper, and bathroom.
18. The Taxpayer also indicated that the Subject Property would require plumbing and cabinetry work in both the bathroom and kitchen.
19. The Taxpayer alleged that the Subject Property would require an estimated \$45,000-\$50,000 in repairs to bring its condition to the average of the neighborhood and that therefore its assessed value should be reduced by that amount. However, the Taxpayer had not obtained actual estimates for the repairs necessary to bring the Subject Property to average condition or provided another basis for the repair estimate.
20. Based on sales of comparable properties and the County Assessors appraisal model the County Appraiser indicated that his opinion of value for the Subject Property, in average

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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. Bd. 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) (Reissue 2018).

condition, would be \$105,567 for tax year 2016, \$9,800 for the land component and \$95,767 for the improvements.

21. The County Appraiser stated that based on the information presented at the hearing, the condition of the Subject Property was below that of the average property in the neighborhood and the condition rating of the Subject Property should not be average.
22. The County Appraiser further indicated that if the Subject Property were to have its condition rating reduced to poor, it would result in a \$20,000 decrease in the value derived from the County Assessor's appraisal model.
23. The Commission finds that the Subject Property should have a condition rating of poor for the 2016 assessment year and that therefore the assessed value of the Subject Property is \$85,567 for tax year 2016.
24. 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.
25. 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	\$ 9,800
<u>Improvements</u>	<u>\$75,767</u>
Total	\$85,567

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 (Reissue 2018).
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 February 1, 2019.

Signed and Sealed: February 1, 2019

Steven A. Keetle, Commissioner