

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Craig S. Putnam,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 16R 0434

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

Background

1. The Subject Property is a two-story residential parcel, with a legal description of: Centennial Lot 56 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$274,300 for tax year 2016.
3. Craig Putnam (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$258,800 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was 274,300 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 23, 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 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).

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 alleges that the assessed value of the Subject Property is excessive when compared to the assessed value of comparable properties.
17. The Taxpayer presented information regarding two other properties in the neighborhood of the Subject Property. These two properties and the Subject Property are the same style of construction, have the same square footage of above ground living space, and appear to have the same or “mirror” floorplans, the same quality and condition ratings, and were built within two years of each other.
18. The Subject Property, however, has a 1,021 square foot finished basement which the other two properties do not.
19. The County Board presented the Property Record File for the Subject Property which indicated that the basement finish added approximately \$35,000 to the assessed value of the Subject Property in the County’s assessment model. The County indicated that the values utilized by the County’s assessment model were based on an analysis of the sales of all residential properties in Douglas County and sales in the same area as the Subject Property.

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).

20. The Taxpayer alleged that the basement finish would add approximately \$15,000 to the value of the Subject Property. The Taxpayer indicated that this opinion of addition to value was based on his discussions with real estate professionals.
21. The Taxpayer further alleged that the value of the Subject Property increased 22% since 2013 while the other two properties have only increased 7.4%.
22. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
23. Additionally the Commission notes that in 2013 the Subject Property and one of the two other properties had the exact same assessed value, while the Subject Property presumably had a finished basement and the other property did not. Further, the assessed value of the Subject Property and the other two properties increased by the same percentage from the 2015 assessment to the 2016 assessment.
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 2016 is affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 37,500
<u>Improvements</u>	<u>\$236,800</u>
Total	\$274,300

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.

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

7. This Decision and Order is effective on March 22, 2019.

Signed and Sealed: March 22, 2019

Steven A. Keetle, Commissioner