

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Craig S. Putnam,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 16R 0435

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

Background

1. The Subject Property is a one story townhouse residential parcel, with a legal description of: Diamond Head Rep 11* Lot 2 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$187,400 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 \$179,800 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$187,400 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 should be the same as the sale price of the Subject Property.
17. “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”⁹
18. “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁰
19. An arm’s length transaction is “A transaction between unrelated parties under no duress.”¹¹

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).

⁹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁰ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

20. The information presented is that the sale of the Subject Property for \$172,000 in April of 2016 was a sale between family members.
21. “Sales that are not arm’s-length...should be identified and rarely if ever used.”¹² “These sales are not made on the open market or are not made with the objective of maximizing the financial position of the parties involved. Thus, they provide unreliable evidence of market value.”¹³
22. The Commission is unable to determine that the sale price of the Subject Property between family members was the actual or fair market value of the Subject Property as of the assessment date.
23. There are several nearby properties presented by the Taxpayer and a few of them have sold; however, the Property Record Files (PRF) for these properties were not presented to allow the Commission to determine whether they are comparable to the Subject Property.
24. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property.¹⁴ Without evidence of an arm’s length transaction to determine a market value for the Subject Property, the Commission is not able to compare the ratio of assessed to actual value for the Subject Property compared to the other sold properties for equalization purposes.
25. The County Board presented the PRF for the Subject Property and 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.
26. The Taxpayer alleged that the value of the Subject Property was impacted by its location on a corner with a four way stop. The Taxpayer pointed out that properties located directly adjacent to Blondo Street (a major east west thoroughfare) received a reduction for their high traffic location. The Taxpayer failed to present evidence regarding the traffic adjacent to the Subject Property as compared to Blondo or otherwise quantify the impact of the intersection with a four way stop on the value of the Subject Property.
27. 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.
28. 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.

¹² See Appraisal Institute, *The Appraisal of Real Estate*, at 304 (13th ed. 2008). Appraisal Institute, *The Appraisal of Real Estate*, at 385 (14th ed. 2013).

¹³ International Association of Assessing Officers, *Mass Appraisal of Real Property*, at 53 (1999).

¹⁴ See *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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 | \$ 15,800 |
| <u>Improvements</u> | <u>\$171,600</u> |
| Total | \$187,400 |

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 March 22, 2019.

Signed and Sealed: March 22, 2019

Steven A. Keetle, Commissioner