

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lecia A. Womack,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0088

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

Background

1. The Subject Property is residential parcel improved with a 1,650 square foot two and one-half story unfinished residence, with a legal description of: Lowes Add Lot 6 Block T W 20 Ft S 107 Ft Lot 5 E 20 S 107 Ft 40 X 107, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$73,200 for tax year 2017.
3. Lecia A. Womack, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$66,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$73,200 for tax year 2017.
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 11, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Jessica Womack was present at the hearing for the Taxpayer.
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 See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

² See, 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 assessed value of the Subject Property was too high due to the condition of being overstated.
17. The Subject Property had renovation and repair work done pursuant to a lead based grant. Jessica Womack offered statements and pictures regarding the renovations and other work that was agreed upon as a part of the lead removal grant, the quality of the workmanship and materials that were used on the project, and the condition of the Subject Property as of the assessment date including the windows, floors, plumbing, and basement finish.
18. The County Board presented the Property Record File (PRF) which set forth the basis of the assessed value of the Subject Property. The PRF indicated that the Subject Property had a condition rating of average and that it had 350 square feet of minimal basement finish.
19. The County Appraiser, after reviewing the information presented at the hearing, as well as the information contained in the PRF, stated that the condition rating of the Subject

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).

Property was too high and that it should be fair rather than average, and that the value attributed to the basement finish should be removed. The County Appraiser stated that the change in condition rating and removal of the basement finish would reduce the value of the improvement on the Subject Property by \$12,600 for tax year 2017.

20. The Commission finds and determines based on the information provided that the assessed value of the Subject Property for tax year 2017 is \$600 for the land component and \$60,000 for the improvement for a total assessed value of \$60,600.
21. 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.
22. 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.

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 600
<u>Improvements</u>	<u>\$60,000</u>
Total	\$60,600

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 2017.
7. This Decision and Order is effective on February 21, 2020.

Signed and Sealed: February 21, 2020

Steven A. Keetle, Commissioner