

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael Schultz,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1164

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

1. A Single Commissioner hearing was held on October 24, 2013, at a Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
2. Michael Schultz was present at the hearing.
3. Larry Thomsen, an employee of the Douglas County Assessor (the Assessor) was present for the Douglas County Board of Equalization (the County Board).
4. The Subject Property is a 2,741 square foot two-story residence located at 11514 Ruggles Circle, Omaha, Douglas County, Nebraska. The legal description of the Subject Property is found in the Case File.

Background

5. The Assessor assessed the subject property at \$202,000 for tax year 2012.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$146,950 for tax year 2012.
7. The County Board determined that the taxable value of the Subject Property was \$202,000 for tax year 2012.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹
10. 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 See, Neb. Rev. Stat. §77-5016(8) (2012 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.”² 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.”³

11. 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.⁴
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵
13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁶
14. Michael Schultz provided a document entitled “Price History,” showing the purchase prices of multiple properties that were asserted to be relevant sales. However, no Property Record Files were presented to allow the Commission to determine the comparability of these parcels to the Subject Property, as required by the Commission’s Order for Hearing.
15. Schultz purchased the Subject Property July 21, 2011, less than six months before the effective date in this appeal of January 1, 2012. Schultz paid \$178,500 for the Subject Property.
16. Schultz indicated the sale was an auction of a foreclosure property; that the highest bid in an earlier auction had been rejected by the Seller, the Federal National Mortgage Association; that his highest bid at auction was accepted; that he did not have an inspection conducted in relation to his auction bid; and that the auction sale did not involve exposure to a typical real estate market.
17. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used.”⁷
18. An arm’s length sale is “[a] transaction between unrelated parties under no duress.”

² *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

³ *Id.*

⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

19. “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.”⁸
20. “Sales that are not arm’s-length...should be identified and rarely if ever used.”⁹
21. The sale at foreclosure auction on July 21, 2011, lacks relevance in this appeal in at least two respects: according to Schultz, the auction sale had not been exposed to an open market; and Schultz also admitted that because he did not have an inspection done, he took some risk regarding the auction sale, and that he had limited knowledge of the characteristics of the Subject Property prior to making the purchase.
22. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁰
23. The Assessor used a mass appraisal multiple regression model, a form of the sales comparison approach, to value the Subject Property.
24. In preparation for this appeal, the Assessor conducted an interior inspection of the Subject Property on January 1, 2013. In that inspection, the Assessor determined that two modifications should be made in relation to the actual value of the Subject Property: the gross square footage was changed from 2,600 to 2,741, and the condition of the improvement was changed from Good to Average. Schultz did not dispute these changes.
25. As a part of the multiple regression model, the Assessor used a Market Calculation Detail (the Detail) with respect to the characteristics of the property. The Detail provided to the Commission indicates a value of \$202,008, however the Detail does not account for the changes as a result of the inspection.
26. The Commission corrected the 2,600 square feet with the square footage of 2,741 in the Detail to apply to central heating & air (Central H&A), square footage (SF), and two story (2 Story), and multiplied those values by the appropriate factors. In the case of the square footage, the Commission has applied a Value Per (unit) of 40 rather than 42, as is done on Details of other comparable Average condition, Average quality properties provided to the Commission by the County Board. The Commission has also removed the value adjustment of \$10,500 for condition Good.

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

⁹ *The Appraisal of Real Estate*, Appraisal Institute, (2008) at 304.

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

27. As a result of these corrections, based upon the inspection of the Subject Property, the Commission finds that the actual value of the Subject Property should be \$193,260.¹¹
28. The Commission finds that competent evidence has been adduced to show that the presumption in favor of the determination of taxable value by the County Board has been rebutted.
29. The Commission finds that clear and convincing evidence that the determination by the County Board is arbitrary or unreasonable, and that determination should be vacated and reversed.¹²

ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2012 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2012 is \$193,260.
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 (2012 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 2012.
7. This Decision and Order is effective on November 1, 2013.

Signed and Sealed: November 1, 2013

Robert W. Hotz, Commissioner

¹¹	2 Fireplaces	\$ 7,350
	Central Heating & Air	\$ 20,146
	Basement Finish	\$ 16,800
	Built-in Garage	\$ 9,702
	3.5 Baths	\$ 18,375
	Square Feet	\$109,640
	Wood Deck	\$ 5,981
	2 Story	-\$ 20,146
	Unfinished Basement	\$ 17,338
	Age (Depreciation)	-\$ 8,000
	Constant	<u>\$ 20,000</u>
		\$196,186
	Neighborhood Factor	<u>X .87</u>
		\$171,552
	Land	<u>\$ 21,708</u>
	Total	\$193,260

¹² Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the time of the protest proceeding.