

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Helen M. Gorr,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 11R 271 & 12R 1177

Decision and Order Reversing Douglas
County Board of Equalization

1. A Single Commissioner hearing was held on **October 11, 2013**, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Helen M. Gorr was present at the hearing for (Taxpayer).
3. Larry Thomsen was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 2,408 square foot 2 story single family dwelling and a 2,303 square foot multi-use building, with a legal description of: All Lots 3-5, Block 7 Cote Brilliante Subdivision, 2.45 acres, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$144,000 for tax years 2011 and 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$104,800 for tax years 2011 and 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$144,000 for tax years 2011 and 2012.
8. The Taxpayer appealed the determination of the County 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 “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

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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

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 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
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.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
14. The Taxpayer asserted that there had been several changes in the neighborhood since 1968 and asserted that the county had not taken these factors into consideration when arriving at the 2011 and 2012 valuations. She described the neighborhood to the Commission. She also noted the Subject Property was located on a gravel road and was not hooked to public utilities. The Subject Property has a septic tank and well. She also asserted that the building on the 2.45 acres was over assessed. She provided the Commission with photos and explained the characteristics of the building.
15. The Appraiser from the County explained the valuation model of the building and agreed that it was overvalued. He noted that it was his opinion that the condition should be Poor and an adjustment should be made because the building located on the Subject Property was not connected to the well as of January 1, 2011 and 2012, and did not have a working bathroom. The Appraiser opined that the change in condition would result in an actual value of the building of \$20,000 to \$25,000. The Commission gives great weight to the Appraiser’s opinion of value for the building and finds that the actual value should be \$20,000.

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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. 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).

16. The Appraiser explained the valuation model of the dwelling and the three comparable properties the county used to verify the model. He noted that the properties did not contain a building like the Subject Property and that he would only use the alleged comparable properties to compare the dwelling and land value.
17. The Taxpayer asserted that she does not have a masonry fire place in the dwelling. She noted that she did have a free standing wood burning stove that did vent outside. The Appraiser was unsure if a wood burning stove would be assessed in the market calculation detail.
18. The Commission finds that the wood burning stove would be personal property and the masonry fire place should be removed.
19. The Commission finds that the actual value of the dwelling component of the Subject Property is \$84,860.
20. The Commission finds the value of the Subject Property to be \$109,860 (dwelling \$84,860, building value \$20,000 and Land Value \$5,000) for tax years 2011 and 2012.
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 sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2011 and 2012 is Vacated and Reversed.
2. That the Taxable value of the Subject Property for tax years 2011 and 2012 is:

Land	\$5,000
<u>Improvements</u>	<u>\$104,860</u>
Total	\$109,860

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. Decision and Order Each Party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2012.

6. This Decision and Order is effective on October 16, 2013.

Signed and Sealed: October 16, 2013

Nancy J. Salmon, Commissioner