

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John M. Kubik
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 12R 069

Decision Affirming Douglas
County Board of Equalization

1. A Single Commissioner hearing was held on August 26, 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. John M. Kubik (Taxpayer) was present at the hearing.
3. Larry Thomsen was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential property improved with a 1,237 square foot single family dwelling, with a legal description of: Lots 16-18, Blk 16 Weir Crest, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$121,100 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$110,700 for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$121,100 for tax year 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 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

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).

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

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 the valuation of the Subject Property had increased since 1998. He noted that valuation of the Subject Property increase in 2012 while several other properties in his neighborhood had decreased. He brought an article to the hearing from the Omaha World Herald dated June 17, 2012 stating that the valuations in his zip code had decreased. He was concerned that if the taxes continue to rise on the property, he may not be able to afford to live in the Subject Property. He did replace the siding on the Subject Property with vinyl siding in 2010.
15. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁸ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.⁹
16. The Appraiser from the County explained that the neighborhood containing the Subject Property had been re-appraised for tax year 2012. He noted that when a re-appraisal is performed, some of the properties may go up and some may go down depending upon some of the physical characteristics of the property condition and market indicators.
17. 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.

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).

⁸ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

⁹ *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

18. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$ 7,700
<u>Improvements</u>	<u>\$113,400</u>
Total	\$121,100

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 September 3, 2013.

Signed and Sealed: September 3, 2013

Nancy J. Salmon, Commissioner