

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Melvin J. Hynek
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 12R 115

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. Melvin J. Hynek (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 parcel containing a 1 ½ story dwelling and a one story dwelling, with a legal description of: Lot 69 Hartman's Add, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$116,400 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$90,000 for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$110,000 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 provided the Commission with an appraisal with an effective date of 11/2/2011. The intended use of the appraisal was to evaluate the Subject Property for a mortgage finance transaction. The Taxpayer’s Appraiser was not available to answer questions. The Commission is unable to determine how the Appraiser’s opinion was calculated. There are several calculations unexplained.
15. The referee comments that the Taxpayer’s Appraiser asserted an opinion of value which was not support by the appraisal. The County Board took the Taxpayer’s appraisal and used the information to obtain a correct calculation and opinion of value.
16. During the hearing, it was noted that there were errors in the County Assessor’s opinion of value on the square feet in the second dwelling. It was listed as 600 square feet and the correct figure is 528 square feet. Also, there were three bathrooms listed on the first dwelling and the Taxpayer stated there are only two. When the calculations are made to the market calculation detail, the valuation on the 528 square foot dwelling would be \$16,553. The calculation on the 1 ½ story dwelling would be \$87,987 for a total improvement value of 104,540. The land valuation is \$6,200. Total valuation with the corrections id $104,540 + 6,200 = 110,740$. This valuation supports the County Board of Equalization’s valuation.

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).

17. The Taxpayer asserted that he would not be able to sell the Subject Property on the open market for \$94,000, because of its condition. His opinion of actual value for the Subject Property for January 1, 2012 is \$90,000.
18. The Taxpayer has produced an appraisal, therefore the presumption is rebutted.
19. 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.
20. 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	\$ 6,200
<u>Improvements</u>	<u>\$103,800</u>
Total	\$110,000

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 5, 2013.

Signed and Sealed: September 5, 2013

Nancy J. Salmon, Commissioner