

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jeffrey S. Allen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 555 & 13R 515

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

1. A Single Commissioner hearing was held on January 21, 2014, 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. Jeffrey S. Allen (the Taxpayer) was present at the hearing.
3. Larry Thomsen, Appraiser for Douglas County Assessor’s Office, was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 2,250 square foot dwelling, with a legal description of: Irreg S 210, N 1133 W 245 Ft Nw ¼ NE ¼ 31-16-10, cont.1.02 Acres, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$197,900 for tax years 2012 and 2013.
6. The Taxpayer protested these values to the Douglas County Board of Equalization and requested an assessed value of \$143,300 for tax years 2012 and 2013.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$197,900 for tax years 2012 and 2013.
8. The Taxpayer appealed the determinations 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 the Subject Property could not be sold for the 2012 or 2013 valuation because: (1) the Subject Property is subject to frequent flooding; and (2) the only access to the Subject Property is through an adjacent parcel and there is no recorded easement. The Taxpayer provided the Commission with photos of an alley that has become an open ditch to drain the property properly. He did not quantify how much either of these assertions would affect the market price of the Subject Property.
15. The Taxpayer asserted that the Subject Property was valued much higher than other properties in the immediate area. He did not provide the Commission with Property Record cards to demonstrate that assertion. He did have a web shot from an alleged comparable property located approximately 4 miles from the Subject Property. He asserted that the alleged comparable had decreased in valuation from 2011 to 2012 whereas the Subject had increased.
16. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”⁸ Equalization is the process of ensuring that all taxable property is

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).

⁸ *Neb. Const.*, Art. VIII, §1.

placed on the assessment rolls at a uniform percentage of its actual value.⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁰

17. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.¹¹ If comparable properties have been valued at materially different levels than the principle of equalization has been violated.¹²
18. While the Taxpayer did produce a web shot with an assessed value for the alleged comparable property, web shots may not contain accurate information. The Commission's order dated December 3, 2013, states that copies of the County Assessor's Property Record File should be provided for any alleged comparable property.¹³ The Property Record File contains more complete and accurate information concerning the characteristics of the alleged comparable property and its assessed value as certified by the County Assessor.
19. The Commission finds that potential differences between the alleged comparable property and the Subject Property may explain the differences in valuation.
20. 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.
21. 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 Decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2012 and 2013, is Affirmed.
2. The taxable value of the Subject Property for tax years 2012 and 2013 is:

Land	\$ 10,200
<u>Improvements</u>	<u>\$187,700</u>
Total	\$197,900

⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹² See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹³ See, Case File.

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 years 2012 and 2013.
7. This Decision and Order is effective on January 28, 2014.

Signed and Sealed: January 28, 2014

Nancy J. Salmon, Commissioner