

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert A. Brown,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 757

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

1. A Single Commissioner hearing was held on January 13, 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. Robert A. Brown (the Taxpayer) was present at the hearing.
3. Larry Thomsen, Appraiser from 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 2,896 square foot two story single family dwelling, with a legal description of: Lot 35, Pacific Woods, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$385,500 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$325,150 for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$385,500 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

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 provided the Commission with a spreadsheet listing the above grade square feet, finished basement square feet, lot size, land and improvement values, 2011 assessed values, and 2012 assessed values of the Subject Property and four alleged comparable properties. He asserted that the Subject Property was overvalued based on the data. He also noted that the assessed value of the Subject Property has increased 31.2 % from 2011 to 2012 while the alleged properties had increased from 0 – 19.3%. The Taxpayer did not bring any property record cards for the alleged comparable properties.
15. The Appraiser for the Douglas County Assessor’s Office explained that the Subject Property was valued as partially complete for tax year 2011, but was assessed as totally finished for tax year 2012. The Appraiser explained that the increase in assessed value between tax year 2011 and tax year 2012 was a result of construction finishing on the Subject Property between January 1, 2011, and January 1, 2012.
16. On the spreadsheet, the Taxpayer derived the average per square foot of the alleged comparable properties as \$95.27. The Taxpayer asserted that the improvement value of the Subject Property should be \$95.27 per square foot as well. The Taxpayer asserted

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).

that the actual value of the Subject Property was \$235,150 using the average per square foot value and adding on a little more to bring it to the midpoint.

17. The Taxpayer's argument may be summarized as an assertion that the Subject Property was not equalized. The Taxpayer supported this assertion by comparing the per square foot assessed value of alleged comparable properties and the Subject Property.
18. Equalization to obtain proportionate valuation may be based on a comparison of the assessed value per square foot of other properties only where the Subject Property and alleged comparable properties are actually comparable and the evidence indicates that the comparable properties and the Subject Property were assessed at materially different levels.
19. While the Taxpayer's spreadsheet indicates that the alleged comparable properties were valued at materially different levels, the Commission finds that the alleged comparable properties are not truly comparable to the Subject Property.
20. Equalization to obtain proportionate valuation may also occur if a comparison of the ratio of assessed to actual value for the Subject Property and other properties indicates that the Subject Property was assessed at a greater level of actual value than other properties.⁸ This requires assertions indicating the actual value of the Subject Property and other properties, and then analysis of the proportion of the actual value of other properties and the Subject Property assessed for ad valorem tax purposes (i.e. an assertion that properties were assessed at 90% of actual value while the Subject Property was assessed at 100% of actual value).
21. There was no evidence of the ratios of assessed to actual value for any of the properties.
22. 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.
23. 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. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 42,000
<u>Improvements</u>	<u>\$343,500</u>
Total	\$385,500

⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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 January 22, 2014.

Signed and Sealed: January 22, 2014

Nancy J. Salmon, Commissioner