

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Katherine C. Lempka,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 11R 495 & 12R 1174

Decision and Order Reversing the
Determinations of the Douglas
County Board of Equalization

GENERAL BACKGROUND AND PROCEDURAL HISTORY

1. The real property subject to appeal (herein referred to as the “Subject Property”) is a residential parcel located at 24308 Mason Street, Waterloo, Nebraska, with a legal description of: WEST SHORES LOT 52 BLOCK 0 IRREG.
2. The Douglas County Assessor assessed the Subject Property at \$728,300 for tax years 2011 and 2012.
3. Katherine C. Lempka (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).
4. The County Board determined that the assessed value of the Subject Property was \$728,300 for tax years 2011 and 2012.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on October 21, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Katherine C. Lempka was present at the hearing.
8. Larry Thomsen, an assessor for the Douglas County Assessor’s Office, was present for the County Board.

STANDARD OF REVIEW

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
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

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).

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

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

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The Taxpayer asserted that the Subject Property was overvalued and that comparable properties were receiving functional and physical depreciation while the Subject Property was not.
15. The Taxpayer provided the Commission with list of comparable properties for both tax years.
16. Thomsen indicated that for the tax years in question 1.5 story residences received a 6% functional obsolescence adjustment.
17. Additionally, review of the comparable properties provided by the County Board and the Taxpayer indicate that improvements constructed thereon during a timeframe similar to the improvements constructed on the Subject Property received 1% physical depreciation in tax year 2011.
18. The County Board provided the Commission with Assessment Reports for tax years 2011 and 2012 as produced by the County Assessor.
19. The Assessment Reports indicate that the Subject Property was valued using the cost approach without any depreciation in 2011 and 2% depreciation in 2012 (all attributed to physical depreciation).⁸ The Subject Property’s Property Record File located in the Assessment Reports indicates that the Subject Property is a 1.5 story residence.⁹
20. The Assessment Reports also indicate that following an inspection in 2010 an employee of the County Assessor’s office stated that the quality of the Subject Property should be lowered from Very Good to Good.¹⁰
21. A review of the 2011 Cost Detail for the Subject Property indicates that the Subject Property was assessed as Very Good for tax year 2011.¹¹ However, the 2012 Cost Detail for the Subject Property indicates that he Subject Property was assessed as Good for tax

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, 2011 Assessment Report, Cost Detail of Building, pg. 11; See also, 2012 Assessment Report, Cost Detail of Building, pg. 11.

⁹ See, 2011 Assessment Report, pg. 2; See also, 2012 Assessment Report, pg. 2.

¹⁰ See, 2011 Assessment Report, Account Notes, pg. 8; See also, 2012 Assessment Report, Account Notes, pg. 8.

¹¹ See, 2011 Assessment Report, Cost Detail of Building, pg. 11.

year 2012.¹² A review of the Cost Details for both years indicates that the reduction in quality rating in 2012 resulted in a lower actual value for the Subject Property.¹³

22. The Assessment Reports further indicate that an inspection in 2013 prior to the Commission's hearing confirmed the opinion of the County Assessor's employee at the previous inspection that the Subject Property should have a quality rating of Good rather than Very Good.¹⁴

GENERAL VALUATION LAW

23. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁵
24. "Actual value, market value, and fair market value mean exactly the same thing."¹⁶
25. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.¹⁷
26. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹
28. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.²⁰

VALUATION ANALYSIS

29. The unrefuted evidence indicates that 1.5 story improvements received a 6% functional depreciation for tax years 2011 and 2012 and the Subject Property did not. The Subject Property should have received a 6% functional depreciation factor due to the 1.5 story design of the improvements.

¹² See, 2012 Assessment Report, Cost Detail of Building, pg. 11.

¹³ See, 2011 Assessment Report, Cost Detail of Building, pg. 11; See also, 2012 Assessment Report, Cost Detail of Building, pg. 11.

¹⁴ See, 2011 Assessment Report, Account Notes, pg. 8; See also, 2012 Assessment Report, Account Notes, pg. 8.

¹⁵ 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 *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. § 77-112 (Reissue 2009).

30. Additionally, the unrefuted evidence indicates that improvements constructed at a similar time as the Subject Property received a 1% physical depreciation in tax year 2011, and the Subject Property did not. The Subject Property should receive a 1% physical depreciation for tax year 2011.
31. Further, the notes from all inspections indicate that the Subject Property for tax year 2011 should have been assessed at a quality rating of Good instead of Very Good.
32. The Commission has extensively reviewed the comparable properties provided by the County Assessor and the Taxpayer and notes that in all instances where the Commission was provided the Property Record Files for both tax years, the assessed value was the same for both years.²¹
33. The Commission notes that its attempt to recalculate the Subject Property's replacement cost new less depreciation, taking into account items contained in the Assessment Report which are not found listed on the Cost Detail of the Building,²² was unable to duplicate the County Assessor's calculation.²³
34. The Commission finds that for the foregoing reasons the County Board's determinations that relied upon the County Assessor's opinions of value are arbitrary and unreasonable.
35. The Commission finds that the actual value of the Subject Property for tax years 2011 and 2012 should be \$697,528.²⁴

CONCLUSION

36. 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.
37. The Taxpayer has adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be vacated.

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 2011 and 2012 are Vacated and Reversed.

²¹ See, 2011 Assessment Report, Comparable Property's Property Record Files; See also, 2012 Assessment Report, Comparable Property's Property Record Files.

²² See, 2011 Assessment Report, pg. 13; See also, 2012 Assessment Report, pg. 13.

²³ A recalculation of the 2011 Cost Detail with all add-ons and items found on pg. 13 of the Assessment Report indicated a replacement cost new significantly less than the assessed value of the Subject Property. Similarly, a recalculation of the 2012 Cost Detail with all add-ons and items found on pg. 13 of the Assessment Report indicated a replacement cost new less than the assessed value of the Subject Property but closer than the 2011 value.

²⁴ (\$288,603 (GLA) + \$1,437 (Outside Entrance) + \$14,434 (Cvrd Wood Deck) + \$24,924 (Built In) + \$5,748 (Walkout) + \$77,025 (Finished) + \$5,134 (Slab Roof Ceiling) + \$72,980 (Basement Conc 9 ft) + \$20,407 (Plumbing Adjustment) - \$551 (Rough In) + \$8,208 (Nat Stone/Moss Rock) + \$1,440 (Sprinkler System) + \$3,736 (Fireplace Gas) + \$1,868 (Security System) + \$4,790 (Allowance)) x .99 (physical depreciation) x .94 (functional depreciation) x 1.13 (neighborhood adjustment) = \$557,528 (replacement cost new less depreciation) + \$140,000 (land) = \$697,528 (actual value).

2. The taxable value of the Subject Property for tax years 2011 and 2012 is:

Land	\$140,000
<u>Improvements</u>	<u>\$557,528</u>
Total	\$697,528

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 2011 and 2012.
7. This Decision and Order is effective on July 10, 2014.

Signed and Sealed: July 10, 2014

Thomas D. Freimuth, Commissioner