

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mark V. Lavin,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1173

Decision and Order Reversing the
Determination 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 6621 State Street, Omaha, Nebraska, with a legal description of: LANDS SEC-TWN-RGE 26-16-12 IRREG E 293.4 N 362.5 FT TAX LT 1.
2. The Douglas County Assessor assessed the Subject Property at \$377,300 for tax year 2012.
3. Mark V. Lavin (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 \$377,300 for tax year 2012.
5. The Taxpayer appealed the determination 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 August 30, 2013, at the Omaha State Office Bldg., 1313 Farnam, Rm. 227, Omaha, NE, before Commissioner Thomas D. Freimuth.
7. Mark V. Lavin was present at the hearing.
8. Kevin Corcoran and Brian Grimm, assessors with the Douglas County Assessor’s Office, were 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

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).

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

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The Taxpayer asserted that he purchased the Subject Property in September of 2010 for \$380,000, but that he never occupied the improvement located on the parcel at the time of sale.
15. The Taxpayer asserted that as of the date of assessment the actual value of the Subject Property was affected by an infestation of mice, mold, inoperable air conditioning, and an unpleasant odor. The Taxpayer asserted that the Subject Property was uninhabitable as of the date of assessment of January 1, 2012.
16. According to documents and statements at the hearing before the Commission, sometime in 2011 the Taxpayer implemented a plan to remove the improvements from the Subject Property and construct a new residence.
17. The Taxpayer stated that as of the date of assessment removal of the Subject Property’s improvement components was underway. A letter from the Taxpayer to contractors indicates that the Taxpayer originally planned to elevate the house and move it to another location, but eventually the decision was made in the spring of 2012 to demolish the improvements instead.
18. The Commission notes that the County Assessor’s original opinion of value that was adopted by the County Board rated the Subject Property’s condition as Very Good and attributed \$33,750 of the actual value of the Subject Property to this condition rating.⁸

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, Assessment Report, pg. 14.

19. The County Board indicated that based on the Taxpayer's description of the Subject Property it would be appropriate to reduce the actual value of the Subject Property.
20. The County Board provided three opinions of value for the Subject Property, one each for condition ratings of Fair, Poor, and Worn Out.

GENERAL VALUATION LAW

21. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹
22. "Actual value, market value, and fair market value mean exactly the same thing."¹⁰
23. 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.¹¹
24. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
25. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
26. 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.¹⁴

VALUATION ANALYSIS

27. The unrefuted evidence indicates that the Subject Property was uninhabitable as of the date of assessment, and that portions of the Subject Property, including the garage, had been partially demolished.
28. The Commission notes that the Subject Property was assessed for all of the area of the garage even though a portion had been demolished.¹⁵

⁹ 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).

¹⁰ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
¹¹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹³ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁵ See, Assessment Report.

29. The Commission finds that it was unreasonable or arbitrary for the County Board to adopt an opinion of value that assigned an incorrect condition rating to the Subject Property and included components of the Subject Property that had been demolished.
30. The Commission finds that the Subject Property was uninhabitable as the date of assessment and had a condition of Worn Out. The Commission also finds that due to the demolition of significant portions of the garage, that the garage did not attribute any value to the Subject Property as of the date of assessment.
31. The Commission finds that the actual value of improvements located on the Subject Property for tax year 2012 should be \$107,512.¹⁶
32. The Commission finds that the actual value of the Subject Property for tax year 2012 should be \$255,212.

CONCLUSION

33. 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.
34. The Taxpayer has 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 vacated and reversed.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$147,700
<u>Improvements</u>	<u>\$107,512</u>
Total	\$255,212

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.

¹⁶ See, County Assessor's Market Calculation Detail document for the "Worn Out" condition rating, which sets forth an improvement value of \$121,606 with the garage, and that \$14,094 of the improvement value is attributable to the garage (\$121,606 - \$14,094 = \$107,512).

6. This Decision and Order shall only be applicable to tax year 2012.
7. This Decision and Order is effective on July 9, 2014.

Signed and Sealed: July 9, 2014.

Thomas D. Freimuth, Commissioner