

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Darin H Karstetter,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 829

Decision Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel located 5155 North 173rd Avenue Circle, Omaha, Douglas County, Nebraska. The legal description of the Subject Property can be found in the Case File.
2. The Douglas County Assessor assessed the Subject Property at \$294,100 for tax year 2012.
3. Darin H. Karstetter (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a \$230,000 valuation for tax year 2012.
4. The County Board determined that the assessed value of the Subject Property was \$294,100 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 March 26, 2014, 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. Darin H. Karstetter, the Taxpayer, was present at the hearing.
8. Larry Thomsen, an assessor with the Douglas County Assessor’s Office, was present for County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File contained in the Assessment Report submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$262,100 on March 20, 2009. The two-story, 2,746 square foot residence situated on the Subject Property was constructed in 2007.
10. The Property Record File for the Subject Property indicates that the County Board’s \$294,100 determination for tax year 2012 includes \$39,000 for land and \$255,100 for the improvement component.
11. The Assessment Report indicates that the Subject Property’s improvement component was based on a cost approach mass appraisal model.
12. The Taxpayer asserted that the actual value of the Subject Property for tax year 2012 equaled the \$245,000 fee appraisal that he submitted dated “as of” July 23, 2012, which he obtained in connection with refinancing. In further support of his assertion that the

- County Board's \$294,100 determination for tax year 2012 was arbitrary or unreasonable, the Taxpayer submitted a \$263,500 fee appraisal dated December 20, 2012, which he also obtained in connection with refinancing the Subject Property.
13. The Taxpayer's appraisals are based on the sales comparison valuation approach.
 14. The Taxpayer's \$245,000 appraisal notes that the cost approach was not utilized "due to the current slump in the housing market and economy in general."
 15. In further support of his \$245,000 opinion of value, the Taxpayer submitted Property Record Files that reflected the assessment history of four nearby parcels that he deemed comparable to the Subject Property. The assessments of these four parcels for tax year 2012 ranged from \$245,100 to \$250,000.
 16. In further support of his \$245,000 opinion of value, the Taxpayer stated that Gateway, which constructed the Subject Property's improvement component in 2007 and was a key subdivision developer of homes in the \$250,000-plus market, went bankrupt after the 2007 – 2008 economic crisis. Thereafter, prior to the assessment date of January 1, 2012, the Taxpayer stated that Celebrity Homes began constructing homes in the subdivision with values that did not exceed \$200,000. He also stated that a park and pool planned by the homeowners' association in 2007 will not be established.
 17. The County's Assessment Report includes three sales comparables, two of which sold at or near \$245,000 and were assessed at or near \$220,000 for tax year 2012. The Assessment Report also includes reference to the \$331,000 sale of a residence located at 17329 Redman Circle that was constructed in 2011.

STANDARD OF REVIEW

18. 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
19. 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

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).

⁴ *Id.*

20. 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
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

GENERAL VALUATION LAW

22. 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
23. “Actual value, market value, and fair market value mean exactly the same thing.”⁸
24. 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.⁹
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁰
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹¹
27. 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.¹²

VALUATION ANALYSIS

28. The Taxpayer’s \$245,000 fee appraisal and other analysis documentation that he submitted can best be described as an attempt to value the Subject Property using the sales comparison approach.

⁵ Neb. Rev. Stat. §77-5016(8) (2010 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 *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2009).

29. The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser “[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences.”¹³
30. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁴ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371, which provides that “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.”¹⁵
31. Based on a review of the Taxpayer’s two fee appraisals, which rely on the sales comparison approach, together with all of the other documents and statements submitted at the hearing, the Commission finds clear and convincing evidence that the County Board’s determination for tax year 2012 was arbitrary or unreasonable.
32. The Commission further finds that the best evidence of value in this case is the \$245,000 valuation contained in the Taxpayer’s July 2012 fee appraisal.¹⁶
33. The Commission finds that the actual value of the Subject Property for tax year 2012 is \$245,000 (\$39,000 land value and \$206,000 improvement value).

CONCLUSION

34. 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.
35. 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. That the taxable value of the Subject Property for tax year 2012:

¹³ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at pgs. 301 - 302.

¹⁴ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008) at 141.

¹⁵ Neb. Rev. Stat. §77-1371 (Reissue 2009).

¹⁶ With respect to the County’s concern regarding the \$18,500 disparity between the Taxpayer’s two appraisals, the Commission places more weight on the July 2012 rather than the December 2012 appraisal because the former is closer to the assessment date of January 1, 2012.

Land	\$ 39,000
Improvements	\$206,000
Total	\$245,000

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 order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2012.
7. This order is effective on July 15, 2014.

Signed and Sealed: July 15, 2014.

Thomas D. Freimuth, Commissioner