

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry J. Schumacher,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 157

Decision and Order Affirming 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 17110 Douglas Street, Omaha, NE, with a legal description of: PACIFIC SPRINGS LOT 214 BLOCK 0 84 X 140.
2. The Douglas County Assessor assessed the Subject Property at \$415,000 for tax year 2012.
3. Larry J. Schumacher (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 an assessed value of \$340,000.
4. The County Board determined that the assessed value of the Subject Property was \$415,000 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 September 5, 2013, at the Omaha State Office Bldg., 1313 Farnam, Rm. 227, Omaha, NE, before Commissioner Thomas D. Freimuth.
7. Larry J. Schumacher was present at the hearing.
8. Larry Thomsen and Kevin Corcoran, employees of the Douglas County Assessor’s Office, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Taxpayer asserted that the Subject Property was overvalued. The Taxpayer provided a document constructed by a real estate firm indicating the listing prices and sales prices for properties which sold in the Subject Property’s development.
10. The Taxpayer asserted that according to that document the average sale price of a property in the development was \$350,000. He asserted that the Subject Property should be valued equal to or lower than the average sale price of properties located in the Subject Property’s development. In support of this assertion, the Taxpayer noted factors associated with the Subject Property that rendered it inferior to other properties in the development including: location, deferred maintenance, and physical depreciation.

11. The County Assessor provided an Assessment Report. According to the Assessment Report, the Subject Property's actual value was calculated using the cost approach.¹

STANDARD OF REVIEW

12. The Commission's review of the determination of the County Board of Equalization is de novo.² "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."³
13. 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."⁴ 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."⁵
14. 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.⁶
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
16. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁸

GENERAL VALUATION LAW

17. 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

¹ See, Assessment Report, pgs. 10-12.

² 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).

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

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).

18. "Actual value, market value, and fair market value mean exactly the same thing."¹⁰
19. 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
20. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
21. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
22. 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

23. The evidence indicates that the Subject Property was valued using a statutorily permissible mass appraisal method.¹⁵ While the Taxpayer generally asserted that the Subject Property was valued too high, his opinion of the Subject Property's actual value was only determined through an examination of sales prices of other properties in the Subject Properties neighborhood.
24. The Taxpayer did not provide any Property Record Files for any of the listed properties, nor did the Taxpayer provide any transfer documents to confirm the sale prices of the properties.
25. The Commission also notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

NOTE: *Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a*

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

property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

26. However, even a review of the document provided by the Taxpayer indicates that some properties within the Subject Property's development sold for substantially more than \$350,000.¹⁶ This would generally support the contention that not all properties listed are comparable with the Subject Property, and that individual physical characteristics of properties within the Subject Property's development impact actual value.
27. Additionally, the cost detail of the Subject Property indicates that the County Assessor assigned both functional and physical depreciation to the Subject Property.¹⁷ These factors comport with the Taxpayer's assertions. The Taxpayer did not provide any evidence that the quantifications of these factors were incorrect.
28. In part because Property Record Files were not submitted by the Taxpayer for any alleged comparable parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's opinion of value does not constitute clear and convincing evidence that the County Board's determination for tax year 2012 was arbitrary or unreasonable.

CONCLUSION

29. 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.
30. 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 \$415,000.
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 Decision and Order is denied.

¹⁶ See, Taxpayer's Listing Documents.

¹⁷ See, Assessment Report, pg. 10.

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 June 27, 2014.

Signed and Sealed: June 27, 2014

Thomas D. Freimuth, Commissioner