

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Anthony L. Milone,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 12R 385 & 13R 527

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

**For the Appellant:**  
Anthony L. Milone,  
Pro Se.

**For the Appellee:**  
Malina M. Dobson,  
Deputy Douglas County Attorney.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located at 2569 Ida Street, City of Elkhorn, in Douglas County, Nebraska. The parcel is improved with a 1,122 square foot residence, built in 1926. The legal description of the parcel is found at Exhibit 3, page 2. The property record card for the Subject Property is found at Exhibit 3.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$55,000 for tax years 2012 and 2013. Anthony L. Milone (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board), requesting a taxable values of \$24,200 for tax year 2012 and \$26,600 for tax year 2013. The County Board determined that the taxable value for both tax years 2012 and 2013 was \$55,000.<sup>1</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on June 11, 2014.

---

<sup>1</sup> See, E1 (County Board's 2012 determination); See also, E2 (County Board's 2013 determination).

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>2</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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."<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>8</sup>

In an appeal, the commission "may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

---

<sup>2</sup> 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). "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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>9</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

## IV. VALUATION

### A. Law

Under Nebraska law,

[a]ctual 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.<sup>12</sup>

“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.”<sup>13</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>14</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>17</sup>

---

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## **B. Summary of the Evidence**

Larry Thomsen, Residential Supervisor for the Assessor, testified that based upon an inspection of the Subject Property on February 14, 2014, the Assessor had a revised opinion of value based on a change in the condition rating of the improvements from average to poor.

The mass appraisal market calculation detail for the Subject Property indicated an assessed value of \$55,042 with the condition rating of average.<sup>18</sup> Thomsen testified he had no reason to believe the Subject Property was not in poor condition as of January 1, 2012, and January 1, 2013. He stated that other comparable properties in the same mass appraisal neighborhood, Neighborhood 25660,<sup>19</sup> with a poor condition rating received a downward adjustment of \$23,000.<sup>20</sup> Based upon the testimony and evidence, the Commission finds that the Subject Property, with a poor condition rating, should receive the same negative adjustment of \$23,000 for both tax years 2012 and 2013.

The County Board argued that since it was not aware of the condition rating of poor at the time their determinations were made for tax years 2012 and 2013 those determinations should not be construed as being arbitrary or unreasonable. The County Board argues that the Commission should also consider that the Taxpayer denied inspection requests made prior to the inspection on February 14, 2014. The Commission is not persuaded by this reasoning.

The Commission's review of the County Board decision is not to determine whether the County Board acted reasonably or arbitrarily in its decision making process, but rather to determine whether the County Board's determinations of value were unreasonable or arbitrary.<sup>21</sup>

Anthony Milone testified that sales of certain alleged comparable properties should be considered when valuing the Subject Property. However, the Taxpayer did not quantify any of the differences between the alleged comparable properties and the Subject Property.

---

<sup>18</sup> See, E4:10.

<sup>19</sup> See, E4:10.

<sup>20</sup> See, E6:4

<sup>21</sup> See, Neb. Rev. Stat. §77-5016(9) (2012 Cum. Supp.).

## V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.<sup>22</sup>

For all of the reasons set forth above, the appeal of the decision of the County Board is vacated and reversed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2012 and 2013 are vacated and reversed.
2. The taxable value of the Subject Property for both tax years 2012 and 2013 are:

Land	\$ 5,900
Improvement	<u>\$ 26,100</u>
Total	\$ 32,000

3. This Decision and Order, if no appeal is timely filed, 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 2012 and 2013.

---

<sup>22</sup> Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

7. This Decision and Order is effective for purposes of appeal on June 24, 2014.

Signed and Sealed: June 24, 2014

---

Robert W. Hotz, Commissioner

SEAL

---

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.