

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kevin W. Hooker,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 609

Decision and Order Affirming the Decision
of the Douglas County
Board of Equalization

Background

1. The Subject Property includes a 3,105 square foot residence located at 19927 Logan Circle, Omaha, Nebraska. The case file contains the legal description of the Subject Property.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$503,500 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board (the County Board).
4. The County Board also determined that the taxable value of the Subject Property was \$503,500 for tax year 2014.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 15, 2015, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz. The hearing was recessed in order to obtain an interior inspection. The hearing was resumed on July 24, 2015, at the same location.
7. Kevin W. Hooker was present at the hearing for (Taxpayer).
8. Kevin Corcoran and Mary Cederberg, employees of the County Assessor, were present for the County Board at the hearing on June 15, 2015. Larry Thomsen and Mary Cederberg, employees of the County Assessor, were present for the County Board at the hearing on July 24, 2015.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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

11. 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The June 15, 2015 hearing was recessed for two reasons: 1) because the property record card for the Subject Property was not provided, including a Cost Detail of Building for the improvements, and 2) in order to allow the County Assessor to conduct an interior inspection of the Subject Property, principally to measure the area of basement finish.
17. After the completion of the inspection, the parties agreed that the finished portion of the basement was 1,200 square feet.
18. At the resumption hearing on July 24, 2015, the County Assessor provided the property record card for the Subject Property including a corrected Cost Detail of Building. In the Cost Detail, the value of the improvement of the Subject Property was shown to be \$438,532 for tax year 2014.

² See, Neb. Rev. Stat. §77-5016(8) (2014 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).

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) (2014 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 Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

19. Kevin Hooker provided the Commission with several property record cards for properties he considered to be comparable to the Subject Property. Each of these property record cards included a Cost Detail of Building which allows for comparison with the Subject Property. Hooker asserted that in comparison to these properties the Subject Property was overassessed. In his analysis, Hooker focused on the total assessed value (including land) per square foot of the improvements. The Commission reviewed each of the property record cards for these comparables, including the Cost Detail of Building. After this review, the Commission finds no evidence that the Subject Property is not equalized with each of these comparable properties. For each of the comparable properties, the Commission finds that the differences between the cost multiplier (\$/Unit) used for each feature of the property is reasonably explained in the context of economies of scale or the marginal utility theory.⁹
20. 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.
21. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable, and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 65,000
<u>Improvements</u>	<u>\$438,500</u>
Total	\$503,500

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 (2014 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 year 2014.

⁹ See, *Property Appraisal and Assessment Administration*, International Association of Assessing Officers, p. 41-43, (1990).

7. This Decision and Order is effective on July 28, 2015.

Signed and Sealed: July 28, 2015

Robert W. Hotz, Commissioner