

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael S. Watson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13A 130 & 14A 164

Decision and Order Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The 25-acre parcel under appeal (herein referred to as the “Subject Property”) is an unimproved recreational parcel located in Douglas County, Nebraska. The Subject Property’s legal description is as follows: LANDS SEC-TWN-RGE 16-16-10 IRREG TRACT LYING E OF ELKHORN RIVER SE 1/4 SE 1/4 25 AC APPROX.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$90,000 for tax years 2013 and 2014.
3. Michael S. Watson (herein referred to as the “Taxpayer”) protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”) for tax years 2013 and 2014.
4. The County Board determined that the taxable value of the Subject Property was \$90,000 for tax years 2013 and 2014.
5. The Taxpayer appealed the determinations of the County Board for tax years 2013 and 2014 to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on May 22, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference RM 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Michael S. Watson, the Taxpayer, appeared at the hearing.
8. Stan Mlotek, an Appraiser employed by the Douglas County Assessor’s Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Taxpayer asserted that the Subject Property should be valued at \$25,000 for tax years 2013 and 2014 (\$1,000 per acre). In support of this assertion, the Taxpayer presented documentation at the hearing before the Commission indicating that the County determined that the assessed value of the Subject Property amounted to \$25,000 for tax years 2007 through 2012.
10. The Taxpayer did not submit Property Record Files (“PRFs”) of comparable properties or an appraisal in support of his assertion that the Subject Property should be valued at \$25,000 for tax years 2013 and 2014.

11. The County Board submitted Assessment Reports for tax years 2013 and 2014, which contain PRFs for the Subject Property and three alleged comparable properties. The Assessment Reports indicate that the Subject Property's assessment was increased from \$25,000 for tax years 2007 – 2012 to \$90,000 for tax years 2013 and 2014 as a result of a "Land Review" by the County Assessor.
12. The Assessment Reports indicate that the County Board's determinations for tax years 2013 and 2014 are based on the County Assessor's sales comparison approach model derived from market area arm's-length sales. The Assessment Reports contain a document entitled "Land Value" that sets forth information concerning three sales that the County asserts support its \$3,600 per acre assessment for tax years 2013 and 2014 (25 acres x \$3,600 = \$90,000).

STANDARD OF REVIEW

13. 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
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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.⁷

¹ 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).

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.*

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).

18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸
19. "Actual value, market value, and fair market value mean exactly the same thing."⁹
20. 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.¹⁰
21. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
22. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
23. 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.¹³

VALUATION ANALYSIS

24. The Taxpayer asserted that the Subject Property should be valued at \$25,000 for tax years 2013 and 2014, which is equal to its assessed value for tax years 2007 - 2012. Other than use of these previous assessments, the Taxpayer did not submit information to sufficiently quantify his opinion of value.
25. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁴ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁵ The use of previous assessed values is not recognized as an appropriate approach.
26. The Commission is unable to place significant weight on the Taxpayer's \$25,000 asserted opinion of value because it is not based on a professionally accepted appraisal approach.
27. The Assessment Reports indicate that the County Board's determinations for tax years 2013 and 2014 are based on the County Assessor's sales comparison approach model derived from market area arm's-length sales. As indicated above, the sales comparison

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

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

¹⁵ *Id.*

approach is a statutorily permissible method to determine the actual value of real property in Nebraska.

28. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's \$90,000 determination was unreasonable or arbitrary for tax years 2013 and 2014.

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 determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

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 2013 and 2014 are affirmed.
2. The taxable value of the Subject Property for tax years 2013 and 2014 is 90,000.
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 (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 years 2013 and 2014.
7. This Decision and Order is effective on June 26, 2015.

Signed and Sealed: June 26, 2015.

Thomas D. Freimuth, Commissioner