

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

Kenneth E. Hassebroek,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14R 603

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

Background

1. The Subject Property includes a 5,610 square foot residence located at 242 N. 248<sup>th</sup> Circle, Waterloo, Nebraska. The legal description of the Subject Property is found in the Case File.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$827,400 for tax year 2014.
3. Kenneth E. Hassebroek, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$827,400 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 12, 2015, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Kenneth E. Hassebroek was present at the hearing.
8. Kevin Corcoran, Mary Cederberg, and Jack Baines, employees of the County Assessor were present for the County Board.

Applicable Law

9. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>1</sup> "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

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<sup>1</sup> 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”<sup>2</sup>

10. 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.”<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>
11. 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>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
13. 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>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

15. The Taxpayer asserted the Subject Property was overassessed with respect to its actual value and that it was not equalized in comparison to other alleged comparable parcels in Douglas County.
16. Kenneth Hassebroek purchased the land of the Subject Property in 2007 for \$123,500.
17. Starting in 2012, Hassebroek built the residence. The parties agreed that the construction of the residence was 85% complete as of the effective date of January 1, 2014.
18. Hassebroek explained that he functioned as the general contractor for the construction of the improvements.
19. Hassebroek provided an itemization of his actual costs to construct the residence, amounting to \$558,603, in a Summary Analysis of Construction Costs. The Taxpayer asserted the assessment of the Subject Property should be based upon the cost of the land

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<sup>2</sup> *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) (2014 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> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

and his costs to build the improvements. However, he admitted that his actual costs did not include the costs associated with the work of a general contractor.

20. According to appraisal literature, “[b]oth direct costs and indirect costs are essential to a reliable cost estimate. Direct construction costs include ... the contractor’s profit required to construct the improvement on the effective appraisal date. The overhead and profit of the general contractor and various subcontractors are usually part of the construction contract and therefore are direct costs that should always be included in the cost estimate.”<sup>9</sup> Also, “[t]ypical costs should be used for estimating any of the four types of cost. Actual costs for similar properties sometimes vary unpredictably, just as sale prices vary among similar properties.”<sup>10</sup>
21. The Commission finds that the Taxpayer’s summary of costs did not indicate a reliable cost estimate because the costs associated with the work of a general contractor were not included.
22. The parties agreed that an employee of the County Assessor had inspected the residence sometime in the fall of 2014.
23. Based upon that inspection, the County Assessor determined that the quality rating of the residence was “very good.” Hassebroek asserted that the quality rating of the Subject Property should have been “good,” rather than “very good.” The Taxpayer described some of the features of the residence, including hardwood floors and cabinetry and granite countertops. Kevin Corcoran expressed his opinion that the homes in the neighborhood of the Subject Property were of either “very good” or “excellent” quality. The Commission finds there is insufficient evidence to conclude that the quality of the Subject Property is “good,” rather than “very good.”
24. The County Assessor used a cost approach and provided a “Cost Detail of Building” indicating that the improvement on the Subject Property was assessed at \$687,448.<sup>11</sup> The Cost Detail also indicated that the improvement was 85% complete as of the effective date of January 1, 2004. While the Cost Detail does not separately indicate a 15% deduction in its calculations shown, there is not sufficient evidence to conclude that the 85% completion rate was not considered in the cost calculation.
25. It appears the County Board relied upon the assessed value determined by the County Assessor utilizing the cost approach. While the Cost Detail indicated a total improvement value of \$687,448, the Commission is concerned that the total of the values listed on the Cost Detail (\$671,438) do not agree with the stated total for replacement cost new (\$599,011). Without an explanation for this difference, the Cost Detail is

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<sup>9</sup> The Appraisal Institute, *The Appraisal of Real Estate*, at p. 571 (14th ed. 2013). Direct costs include “expenditures for labor and materials used in the construction of improvements; also called *hard costs*.” Indirect costs include “expenditures or allowances for items other than labor and materials that are necessary for construction, but are not typically part of the construction contract. Indirect costs may include administrative costs, professional fees, financing costs and the interest paid on construction loans, taxes and the builder’s or developer’s all-risk insurance during construction, and marketing, sales, and lease-up costs incurred to achieve occupancy or sale.” Indirect costs are also known as *soft costs*. *Id.*

<sup>10</sup> Association of Assessing Officers, *Property Assessment Valuation*, at p. 237 (3rd ed. 2010).

<sup>11</sup> This was rounded to \$687,400.

cryptic, and does not give the Taxpayer an understanding of how the cost approach was used to determine the taxable value of the improvements on the parcel. None of the three employees of the County Assessor were able to explain this apparent discrepancy with any certainty. While there is not clear and convincing evidence that the County Board determination (which appears to have been made in reliance upon the value total from the County Assessor's Cost Detail of Building) was arbitrary or unreasonable, the Commission has concern regarding the transparency and accessibility of the process when the Cost Detail cannot be more fully explained.

26. Hassebroek provided real estate listings for several properties he asserted were comparable to the Subject Property. However, no property record files were included for any alleged comparable parcel as ordered by the Commission in its Order for Hearing.
27. Without the property record files for the alleged comparable parcels, the Commission is unable to appropriately compare those parcels to the Subject Property for purposes of an equalization analysis.
28. 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.
29. 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 Douglas 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 \$827,400.
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.
7. This Decision and Order is effective on June 17, 2015.

Signed and Sealed: June 17, 2015

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Robert W. Hotz, Commissioner