

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Boland Properties LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14C 437

Decision and Order Reversing the
County Board of Equalization

Background

1. The Subject Property is a 7,400 sq. ft. commercial property, with a legal description of: South Omaha City Lots Lot 4 Block 79 W 75 N 20 & S 40 Ft & N 9 inches W 90 Ft Lot 4, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$499,500 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$307,500 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$499,500 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 September 22, 2016, at the Omaha State office Building, 1313 Farnam, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle
7. Daniel J. Boland, LeRoy F. Kozeny and Monte Bowman were present at the hearing for Boland Properties LLC (Taxpayer).
8. Linda Rowe of the Douglas County Assessor/Register of Deeds office was present for the County Board.

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).

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).

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 Taxpayer alleged that the assessed value of the Subject Property is not equalized with the assessed value of other comparable properties.
17. LeRoy Kozeny presented information regarding the comparability and assessed values of several properties in the area of the Subject Property.
18. Linda Rowe indicated that based on her review of the information presented at the hearing, her opinion would be that the assessed value of the Subject Property was not equalized with those of comparable properties. She stated that the Subject Property was most comparable to the property located at 4938 S. 24th Street.
19. The information presented demonstrated that assessed value of the Subject Property was not equalized with those of other comparable properties.
20. The Subject Property was most comparable to the property located at 4938 S. 24th Street and should be assessed at a similar per square foot value.
21. Based on the information presented at the hearing the Subject Property should have an assessed value for tax year 2014 of \$245,866.

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(9) (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.).

22. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. The Taxpayer has 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 vacated.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 28,800
<u>Improvements</u>	<u>\$217,066</u>
Total	\$245,866

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 November 10, 2016.

Signed and Sealed: November 10, 2016

Steven A. Keetle, Commissioner