

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

Margarita Washington,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14C 410

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

Background

1. The Subject Property is a 3,000 square foot retail building, with a legal description of: Bedford Place, Lot 10, Block 14 49.75 x 120, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$95,000 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 \$10,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$95,000 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 July 5, 2016, at the Omaha State Office Building, 1313 Farnam St, Conference Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Allan M. Ziebarth, Attorney at Law, was present at the hearing for the Taxpayer (the Taxpayer).
8. Shakil A. Malik, Deputy Douglas County Attorney, and Linda Rowe, Commercial Appraiser for the Douglas County Assessor’s Office, (County Appraiser) were 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</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). “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.”<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>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the assessed value of the Subject Property should be reduced because the West 1/3 to 1/2 of the roof had collapsed.
17. While the Taxpayer was uncertain of the date of the roof collapse it was after the assessment date of January 1, 2014.
18. The Taxpayer alleged that there were structural problems with the front section of the building located on the Subject Property, but an engineer’s report had not been obtained to document these problems.
19. The Taxpayer indicted that there were signs on the front of the building and that the occupants of the back section stored some items in the front section of the Subject Property, but that the front section had been otherwise unoccupied for several years prior to the assessment date.
20. The Taxpayer further asserted that the assessed value of the Subject Property should be reduced because of the economically depressed nature of the area and the lack of rent being paid by the occupants of the undamaged portion of the Subject Property.

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<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(9) (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.).

21. “Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect typical management and smoothed or stabilized across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.”<sup>9</sup>
22. The County Appraiser indicated that a reappraisal of all commercial property in the county was conducted for the 2014 tax year.
23. The County Appraiser indicated that the assessed value of the Subject Property was based on an assessment model which utilized current commercial sales and an exterior inspection of the Subject Property conducted in August of 2013.
24. 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.
25. 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	\$ 4,400
<u>Improvements</u>	<u>\$90,600</u>
Total	\$95,000

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 year 2014.

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<sup>9</sup> International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

7. This Decision and Order is effective on September 16, 2016.

Signed and Sealed: September 16, 2016.

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Steven A. Keetle, Commissioner