

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Keith L. Harris,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 649

Decision and Order Affirming the Douglas
County Board of Equalization

Background

1. The Subject Property is a 2,832 square foot residential property, with a legal description of: Torrey Pines, Lot 107 Block 0 Irreg, Douglas County, Nebraska (the Subject Property).
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$245,300 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 \$225,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$245,300 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 6, 2016, at the Omaha State Office Building, 1313 Farnam St, Conference Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Keith L. Harris was present at the hearing (the Taxpayer).
8. Larry Thomsen, Senior Appraiser Residential for the Douglas County Assessor's Office, (Appriaser) 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 the assessed value of the Subject Property should be reduced due to repairs that are required for the roof and siding as of the assessment date.
17. The Taxpayer indicated that at the time of purchase the roof and siding were in the same date of disrepair that they were as of the assessment date, and that additionally the air conditioning system did not work.
18. The Taxpayer purchased the Subject Property for \$250,000 in May of 2012 and the Subject Property was assessed at \$245,300 as of January 1, 2014.
19. The Taxpayer alleged that for the 2014 tax year there was a reduction in the assessed values for comparable homes in his subdivision, while the Subject Property’s assessed value increased by \$10,000.
20. The Taxpayer presented some information regarding the assessed values of properties located in the same subdivision as the Subject Property that indicated a potential disparity in the assessed value of the Subject Property in relation to these other properties. This information was incomplete as it did not contain the cost information or assessment

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.).

factors for the 2014 tax year which would allow the Commission to evaluate this allegation as a possible basis for relief.

21. The Appraiser indicated that he would not be able to evaluate the Taxpayer's allegation regarding the reduction of other properties in his subdivision, while the Subject Property increased, based on the information presented at the hearing.
22. 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.
23. 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	\$ 28,000
<u>Improvements</u>	<u>\$217,300</u>
Total	\$245,300

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 September 16, 2016.

Signed and Sealed: September 16, 2016.

Steven A. Keetle, Commissioner