

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

Keith D. Thiessen,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13C 540 and 16C 356

Decision and Order Affirming the  
County Board of Equalization

1. A Single Commissioner hearing was held on April 3, 2017, at the Omaha State Office Bldg, 1313 Farnam, Third Floor, Room H, Omaha, NE, before Commissioner Steven A. Keetle.
2. Keith D. Thiessen was present at the hearing for (Taxpayer).
3. Linda Rowe of the Douglas County Assessor/Register of Deeds Office was present for the Douglas County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a 3,000 square foot commercial property, with a legal description of: Fowler Place Lot 9 Block 1, LT 9 50 x 125, Omaha, Douglas County, Nebraska.

**Background**

5. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$202,500 for tax year 2013.
6. The Taxpayer protested this value to the Douglas County Board and requested an assessed value of \$76,300 for tax year 2013.
7. The Douglas County Board determined that the taxable value of the Subject Property was \$202,500 for tax year 2013.
8. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$202,500 for tax year 2016.
9. The Taxpayer protested this value to the Douglas County Board and requested an assessed value of \$128,800 for tax year 2016.
10. The Douglas County Board determined that the taxable value of the Subject Property was \$202,500 for tax year 2016.
11. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

## Issues & Analysis

12. 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 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>
13. 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>
14. 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>
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
16. 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>
17. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
18. The Taxpayer alleged that the Subject Property should be assessed at the same value as another property the Taxpayer owns which is located on Ames Avenue (the Ames Property).
19. The Taxpayer did not provide the Property Record File for the Ames Property for the Commission to analyze its comparability to the Subject Property.
20. Comparable properties share similar use, physical characteristics, and location.<sup>9</sup>

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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).

<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(9) (2016 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) (2016 Cum. Supp.).

<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

21. The Subject Property and the Ames Avenue property are both used as laundromats. The Taxpayer indicated that both buildings are of concrete construction with basements.
22. The Subject Property is rated Average condition and Average quality while the Ames property is rated Fair condition and Fair quality.
23. The Subject Property is 3,000 square feet while the Ames property is 4,040 square feet.
24. The Subject Property and the Ames property are located in different areas of Omaha.
25. The County indicated that the differences in location, quality, and condition between the Subject Property and the Ames property accounted for the differences in their assessed values.
26. 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.
27. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary 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 2013 and 2016 are Affirmed.
2. The taxable value of the Subject Property for tax year 2013 and 2016 are:

Land	\$ 7,800
<u>Improvements</u>	<u>\$194,700</u>
Total	\$202,500

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 (2016 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 2016.
7. This Decision and Order is effective on April 24, 2017.

Signed and Sealed: April 24, 2017

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Steven A. Keetle, Commissioner