

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harold W. Andersen ETAL Trust,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 196

Decision and Order Affirming the
County Board of Equalization

Background

1. The Subject Property is a 4,046 square foot 1 ½ story residential property, with a legal description of: Fairacres Add, Lot 35 Block 0, Irreg S .93 AC N 1.66 AC, .93 AC, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,037,900 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 \$598,808 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$900,000 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 November 23, 2016, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Mark LaPuzza was present at the hearing for the Harold W. Andersen Trust (Taxpayer).
8. Shakil A. Malik 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
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

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).

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 Subject Property was over assessed because it had not been remodeled or redecorated since 1989.
17. The Taxpayer produced pictures of the interior of the Subject Property that show the Subject Property has not been remodeled since 1989.
18. The Taxpayer failed to quantify the impact that the lack of interior decoration or remodeling had on the assessed value of the Subject Property.
19. The Taxpayer alleged that a recent sale of a property near the Subject Property indicated that the Subject Property was not properly assessed.
20. The Taxpayer did not produce the property record card for this recent sale, but rather the information from the assessor’s web site which does not contain all of the information that would allow the Commission to determine the comparability of this property to the Subject Property.
21. The information provided however indicates that the Taxpayer’s recent sale property is of a lower Quality and Condition rating than the Subject Property and that the recent sale had not been remodeled since it was built in 1951.

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 alleged that a listing of a property near the Subject Property for sale indicated that the Subject Property was not properly assessed.
23. The Taxpayer did not produce the property record card for this recent listing, but rather the information from the assessor's web site which does not contain all of the information that would allow the Commission to determine the comparability of this property to the Subject Property.
24. The information provided however indicates that the Taxpayer's recent listing property is of a similar Quality and Condition rating as the Subject Property and that it has not been remodeled since 1969.
25. The County provided the Property Record Cards for three properties that it deemed comparable to the Subject Property and had recently sold.
26. The Property Record Cards for these three properties indicates that they are of a similar or higher Quality and Condition rating as the Subject Property and had been remodeled a decade or more after the Subject Property was remodeled.
27. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.⁹ If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.¹⁰
28. Neither the Taxpayer nor the County made adjustments to the sales prices or assessed values to account for differences between the Subject Property and their respective comparable properties for characteristics such as Quality, Condition, age, amenities, etc.
29. The evidence before the Commission indicates that in the neighborhood of the Subject Property lower Quality and Condition homes sell for and are assessed for less than the Subject Property while higher Quality and Condition homes sell for and are assessed for more than the Subject Property.
30. 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.
31. 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:

⁹ See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

¹⁰ See, Appraisal Institute, The Appraisal of Real Estate, at 297 (13th ed. 2008) (requiring adjustments for comparable sales to account for differences with the Subject Property).

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	\$291,200
<u>Improvements</u>	<u>\$608,800</u>
Total	\$900,000

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.
7. This Decision and Order is effective on February 9, 2017.

Signed and Sealed: February 9, 2017

Steven A. Keetle, Commissioner