

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert L. Gosney ETAL,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 132

Decision and Order Reversing the
County Board of Equalization

Background

1. The Subject Property is a 2,418 square foot two story residential property, with a legal description of: Stone Park, Lot 141, Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$223,200 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 \$206,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$223,200 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 18, 2016, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F., Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Robert Gosney and Josie Gosney were present at the hearing for (Taxpayer).
8. Larry Thomsen 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 Taxpayers alleged that the Subject Property’s assessment was not uniform and proportionate with those of other comparable properties adjacent to the Subject Property.
17. The Taxpayers produced a table that showed that assessed values for properties on Curtis Avenue did not correspond to the square footage of these properties.
18. The Taxpayers did not however produce the Property Record Files containing the characteristics of these properties (i.e. quality and condition, amenities, add ons, etc) with which the Commission could determine the comparability of these other properties to the Subject Property.
19. There was insufficient information for the Commission to grant relief to the Taxpayer based on this claim
20. The measurements and sketch contained in the Property Record Card demonstrates that the County utilized incorrect square footages for the living area, basement, and garage when calculating the value of the Subject Property.
21. Correcting the calculation found in the Cost Detail based on the measurements of the Subject Property contained in the County’s sketch of the Subject Property would result in an improvement value for of \$189,700 for tax year 2014.

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

Land	\$ 25,000
<u>Improvements</u>	<u>\$189,700</u>
Total	\$214,700

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 January 27, 2017.

Signed and Sealed: January 27, 2017.

Steven A. Keetle, Commissioner