

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

Richard E. Czerwinski,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14R 308

Decision and Order Affirming the  
County Board of Equalization

Background

1. The Subject Property is a 2,874 square foot ranch style residential property, with a legal description of: The Hamptons Lot 106, Block 0, Irreg 69348 sq ft, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$744,400 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$744,400 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 January 5, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Richard E. Czerwinski was present at the hearing (Taxpayer).
8. Larry Thomsen of the Douglas County Assessor/Register of Deeds Office 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.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

---

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

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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 alleged that the square footage of the Subject Property in the County’s records is incorrect.
17. The Taxpayer’s allegation is that the Subject Property has a smaller second floor area, described as a loft by the Taxpayer, that the Taxpayer believes should be assessed at a lower amount per square foot than the ground level living area.
18. The Taxpayer did not present any information relating to the amount per square foot the “loft” area should be assessed.
19. The evidence presented by the Taxpayer, while incomplete as noted later in this order, indicates that the only other parcel referenced by the Taxpayer that has a smaller second floor “loft” area is assessed in the same manner as the Subject Property with all above ground living space being assessed at the same base square foot amount.
20. The Taxpayer alleged that the Subject Property was over assessed in relation to comparable properties in other similar subdivisions in Douglas County.

---

<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.).

21. The Taxpayer presented a chart listing addresses, year built, style, listed square footage, assessed value, and price per square foot of properties located in similar subdivisions to the Subject Property.
22. The Taxpayer did not however, present the Property Record Files or other information to allow the Commission to evaluate the comparability of the properties located outside of the Subject Property's subdivision. The information presented consists of partial web shots of information from the County Assessor's web site that do not list the physical characteristics of the properties to allow the Commission to determine if they are comparable to the Subject Property and analyze the Taxpayers allegation.
23. Comparable properties share similar use, physical characteristics, and location.<sup>9</sup>
24. The Taxpayer next alleged that the Subject Property was over assessed as compared with other properties in the same subdivision.
25. The Taxpayer did not present the Property Record Files or other information to allow the Commission to evaluate the comparability of properties located in the Subject Property's subdivision. The information presented consists of partial web shots of information from the County Assessor's web site that do not list the physical characteristics of the properties to allow the Commission to determine if they are comparable to the Subject Property.
26. The County did offer the Property Record Files for three properties located in the Subject Property's subdivision which sold in 2013.
27. The Commission finds that the differences in assessed values between the Subject Property and the County's three properties can be seen in differences in characteristics of the properties such as amount of finished basement square footage, covered decks, residential elevator, etc.
28. A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value.<sup>10</sup>
29. 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.
30. 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.

---

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

<sup>10</sup> Appraisal Institute, Appraising Residential Properties, at 334 (4th ed. 2007).

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	\$120,000
<u>Improvements</u>	<u>\$624,400</u>
Total	\$744,400

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 year 2014.
7. This Decision and Order is effective on March 30, 2017.

Signed and Sealed: March 30, 2017

---

Steven A. Keetle, Commissioner