

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

RE Czerwinski Construction, Inc,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 316

Decision and Order Affirming the
County Board of Equalization

Background

1. The Subject Property is an unimproved residential lot, with a legal description of: The Hamptons, Lot 111, Block 0, Irreg 61914 Sq Ft, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$45,000 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 \$45,000 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 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 1.¹
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) (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).

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 assessed value of the Subject Property, an unimproved residential lot located in the Hampton’s subdivision, was too high.
17. The Taxpayer presented a list of ten unimproved lots located in the Hamptons subdivision that he indicted were sold or were for sale around April of 2014. The Taxpayer indicted that four of these properties sold for \$55,000, \$62,000, \$90,000 and \$109,950.
18. The County presented a map containing information concerning five sales of unimproved lots located in the Hamptons subdivision which were sold for \$109,000, \$130,000, \$127,000, \$90,000 and \$84,950 in August of 2013, September of 2013, January of 2014, April of 2012, and October of 2013 respectively.
19. The information presented to the Commission appears to indicate that the assessed value of the Subject Property is too low for tax year 2014.
20. The County did not provide notice to the Taxpayer of an intent to request that the assessed value of the Subject Property be increased for tax year 2014, and therefore the Commission will not consider increasing the assessed value of the Subject Property for tax year 2014.⁹

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) (2016 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) (2016 Cum. Supp.).

⁹ Title 442 Neb. Admin. Code, ch 5 §016.02A (6/11)

21. The Taxpayer alleged that the value of some of the unimproved lots in the Hamptons subdivision were impacted by their proximity to trees.
22. The Taxpayer did not produce any information that quantified the impact of the proximity to trees on the value of the unimproved lots in the Hamptons subdivision.
23. 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.
24. 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 \$45,000.
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 (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