

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Timothy T. Bilek,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 10R-044

Decision Affirming the Douglas County
Board of Equalization

For the Appellant:

Timothy T. Bilek,
Taxpayer

For the Appellee:

Tom Barrett,
Douglas County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 2,970 square foot home. The legal description of the parcel is found at Exhibit 2:2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the subject property was \$299,600 for tax year 2010. Timothy T. Bilek (Taxpayer) protested this assessment to the Douglas County Board of Equalization (County Board). The County Board determined that the assessed value for tax year 2010 was \$267,300. (E1)

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on August 15, 2011.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo. See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of*

Equal., 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).¹ When the Commission considers an appeal of a decision of a county board of equalization, 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.” *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. at 283, 753 N.W.2d at 811 (2008).

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.

Id. 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. 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) . The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹ “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).

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.

Neb. Rev. Stat. §77-112 (Reissue 2009). "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach."

Neb. Rev. Stat. §77-112 (Reissue 2009). "Actual value, market value, and fair market value mean exactly the same thing." *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

Timothy Bilek testified on behalf of the Taxpayer. Bilek asserted that the subject property was over assessed for tax year 2010. The Taxpayer offered evidence of alleged comparable properties. E6:12-13, E2:13-17. The sales comparison approach is a statutorily accepted approach to the valuation of real property in Nebraska. Neb. Rev. Stat. §77-112 (Reissue 2009). The proper procedure for using the sales comparison approach however, is to "[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable." *The Appraisal of Real Estate*, 13th Edition,

Appraisal Institute, 2008 at p. 302. The Commission notes that the Taxpayer testified and evidence indicates that there were differences between the alleged comparable properties and the subject property, including differences in size and quality. E6:12-13, E2:13-17. The Taxpayer did not quantify any adjustments to the alleged comparable properties.

Bilek also gave his opinion of value as the owner of the subject property. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). Bilek indicated an opinion of value for the subject property of between \$250,000 and \$252,000. Bilek testified that he arrived at that opinion of value by looking at the per square foot value of alleged comparable sales in his neighborhood.

Kurt Skradis, a licensed appraiser employed by the Douglas County Assessor's office, testified on behalf of the County Board. Skradis testified that he valued the subject property using accepted mass appraisal procedures and arrived at a value of \$299,642. Skradis testified that on June 17, 2011, an employee from his office conducted an interior inspection of the subject property. The results of the inspection required adjustments to his previous opinion of value. Skradis stated that the square footage of the gross living area of the property should be adjusted from 2,970 square feet to 2,946 square feet, and that the total basement square footage should be reduced to 1,174 square feet. Mr. Skradis indicated that the subject property was of very good quality and good condition. The Taxpayer disputed the quality of the home, asserting that it was good, but not very good.

Skradis testified that after the interior inspection of the subject property his adjusted opinion of value was \$267,300. There is a presumption that the assessing official has performed his or her duties according to law. *See, State ex rel. Bee Building Co. v. Savage*, 65 Neb. 714 (1902); *Woods v. Lincoln Gas & Electric Co.*, 74 Neb. 526 (1905); *Brown v. Douglas Co.*, 98 Neb. 299 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709 (1955); *Collier v. Logan County*, 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415 (1965). The Commission gives weight to the Skradis adjusted opinion of value.

V. CONCLUSION

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that the Taxpayer has not provided clear and convincing evidence that the County Board’s determination was arbitrary or unreasonable.

For all of the reasons set forth above, the determination by the County Board is affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the subject property for tax year 2010 is affirmed.
2. The Assessed value of the Subject property for tax year 2010 is:

Land	\$18,300.00
<u>Improvements</u>	<u>\$249,000.00</u>
Total	\$267,300.00

3. This decision and order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.
7. This order is effective for purposes of appeal on May 15, 2012.

Signed and Sealed: May 15, 2012

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.