

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gerald O. Schmidt,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15R 0035

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is 2,173 square foot ranch property, with a legal description of: Trailridge Ranches, Lot 47, Block 0 160 x 290, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$429,500 for tax year 2015.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$350,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$380,300 for tax year 2015.
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 April 4, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Betty Schmidt 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 was not equalized with other properties in the Subject Property’s neighborhood.
17. The Taxpayer did not produce the property record cards for the other neighborhood properties, but rather presented the information from the County Assessor’s web site, which does not contain all of the information that would allow the Commission to determine the comparability of these properties and their assessment to the Subject Property.
18. The information that was provided indicates, where it can be determined, that the differences in the assessment of the Subject Property compared to the other neighborhood properties are due to differences in Quality, Condition, year built, or other factors.
19. The Taxpayer alleged that the land component of the Subject Property was over assessed when compared to a neighboring property that had an extra unimproved lot but the same assessed land value.
20. The Taxpayer was unable to demonstrate that the double lot was not separately assessed from the neighboring property for the 2015 tax year. Additionally the information

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.).

presented indicated that there were conditions present that made the extra unimproved lot unbuildable.

21. The information that was provided indicated that properties without walkout lots such as the Subject Property were assessed with the same land value as properties in the Subject Property's neighborhood with walkout lots for the 2015 tax year.
22. The information presented further indicated that a non-walkout lot was worth 10% less than a walkout lot in the Subject Property's neighborhood for the 2015 tax year.
23. The assessed value of the land component of the Subject Property for tax year 2015 is therefore \$45,000 for tax year 2015.
24. 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.
25. 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 2015, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 45,000
<u>Improvements</u>	<u>\$330,300</u>
Total	\$375,300

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 2015.
7. This Decision and Order is effective on May 10, 2017.

Signed and Sealed: May 10, 2017

Steven A. Keetle, Commissioner