

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mark E. Gammell,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1179

Decision Affirming Douglas
County Board of Equalization

1. A Single Commissioner hearing was held on December 12, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Mark E. Gammell (the Taxpayer) was present at the hearing.
3. Larry Thomsen, Appraiser from Douglas County Assessor’s Office was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a 1,944 square foot single family dwelling, with a legal description of: Lot 10, Block 5, Halcyon Heights, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$127,100 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$106,000 for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$127,100 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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.”²

10. 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.”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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Taxpayer asserted that the Subject Property had been re-appraised for January 2013 which resulted in a decreased valuation for the Subject Property. The Taxpayer asserted that the Subject Property had the same actual value for both tax years 2012 and 2013. The Taxpayer asserted that the Subject Property’s actual value for tax year 2012 was equal to the county assessor’s 2013 value. He provided the Commission with several screen shots for properties he alleged to be comparable to the Subject Property. He noted that the actual value of these alleged comparable properties had also decreased for 2013. He also noted the valuation per square foot of the alleged comparable properties.
15. The Appraiser noted that the entire neighborhood had been re-appraised for 2013. He stated that his opinion of value for January 1, 2012 would not change from the property record card.
16. The value of the Subject Property may change from year to year.⁸ The Subject Property must be assessed at actual value as of January 1 each year.⁹ Because

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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(8) (2012 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 See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

conditions may cause the actual value of a Subject Property to change from year to year, a subsequent year's valuation is not relevant to the actual value of the Subject Property as of January 1, 2012.¹⁰

17. The Commission examined the alleged comparable properties and notes several differences in square feet, style, condition, garages, porches and decks between the alleged comparable properties and the Subject Property.
18. The Taxpayer alleged that an examination of the assessed value per square foot indicated that the Subject Property was assessed at a greater value per square foot than the alleged comparable properties.
19. The Commission finds that the alleged comparable properties are not truly comparable. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹¹ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹² The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.
20. 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.
21. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

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 2012, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2012 is:

Land	\$12,800
<u>Improvements</u>	<u>\$114,300</u>
Total	\$127,100

¹⁰ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

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 (2012 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 2012.
7. This Decision and Order is effective on December 27, 2013.

Signed and Sealed: December 27, 2013

Nancy J. Salmon, Commissioner