

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

William J. Egan,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 885

Decision and Order Reversing the Decision  
of the Douglas  
County Board of Equalization

**Procedural Background**

1. The Subject Property is a residential parcel with a 1,352 square foot home located at 8104 Raven Oaks Drive, Omaha, Douglas County, Nebraska. The legal description of the Subject Property is found in the Case File.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$175,300 for tax year 2012.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the subject property was \$156,000 for tax year 2012.
5. The Taxpayer appealed the Decision of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 31, 2014, and July 29, 2014, at a Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. William J. Egan was present at the hearing.
8. Larry Thomsen, an employee of the County Assessor, was present on behalf of the County Board.

**Applicable Law**

9. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>1</sup> “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

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<sup>1</sup> 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”<sup>2</sup>

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.”<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>
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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### **Findings of Fact and Conclusions of Law**

15. William Egan asserted that the land component of the Subject Property was assessed too high because 37% of the area of the parcel was not useable due to the slope of the land. Egan stated that he had attempted to add a work shed to the rear of the parcel, but had been advised by a contractor that the slope of the land prohibited adding the shed where he wished to build it. Egan argued that because of this limitation, 37% of his parcel should have less assessed value. Egan did not quantify the value of the limited-use portion of the parcel.
16. The County Assessor completed an exterior and interior inspection of the Subject Property on April 3, 2014, as directed by the Commission at the hearing on March 31, 2014.
17. After the inspection, the County Assessor made changes to the property record files for the Subject Property as follows: the quality and condition ratings of the improvements

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

<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(8) (2012 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) (2012 Cum. Supp.).

were reduced from good to average; the square footage of basement finish was increased from 400 to 550; and the number of baths was increased from 2.5 to 3. William Egan did not dispute any of these corrections.

18. Based upon the corrected property record file market calculation detail, the County Assessor determined that the improvement value was \$129,632.
19. After the inspection of the exterior of the Subject Property, including the land component, Larry Thomsen stated that the County Assessor still opined that the value of the land was \$40,500, based upon the area of 20,250 square feet times \$2 per square foot. Thomsen stated that the land component of each parcel in the neighborhood of the Subject Property was likewise valued at \$2 per square foot. Thomsen asserted that the 37% of the land component was still useable as a residential parcel depending upon the personal preferences of the residential market.
20. The Commission finds that the County Assessor's opinion of value after the inspection of the Subject Property is competent evidence of the actual value of the Subject Property on January 1, 2012.
21. Competent evidence has been adduced to rebut the presumption in favor of the determination of the County Board.
22. The Commission finds that the opinion of value of the County Assessor, after the inspection of the Subject Property, is clear and convincing evidence of the actual value of the Subject Property.
23. Sufficient, clear and convincing evidence has been adduced that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be reversed.

## **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 vacated and reversed.<sup>9</sup>
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 40,500
Improvements	<u>\$129,632</u>
Total	\$170,132

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.).

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<sup>9</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the protest proceeding.

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 August 8, 2014.

Signed and Sealed: August 8, 2014.

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Robert W. Hotz, Commissioner