

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

John F. Bascom,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 1190

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

1. A Single Commissioner hearing was held on January 21, 2014, 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. Mr & Mrs. John F. Bascom (the Taxpayers) were present at the hearing.
3. Larry Thomsen, Appraiser for 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 2,112 square foot 1 ½ story family dwelling and 864 square foot detached garage, with a legal description of: N 200 Ft Lts & 7, 200 x 237, Block 4 Brighton, Omaha, Douglas County, Nebraska.

**Background**

5. The Douglas County Assessor assessed the Subject Property at \$132,200 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization and requested an assessed value of \$110,000 for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$132,200 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.<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

---

<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. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>8</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>9</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>10</sup>
15. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>11</sup> If comparable properties have been valued at materially different levels than the principle of equalization has been violated.<sup>12</sup>
16. The Taxpayers asserted that the valuation of the Subject Property increased on January 1, 2012 and other properties in their neighborhood had decreased. They asserted that they

---

<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. Const.*, Art. VIII, §1.

<sup>9</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>10</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>11</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>12</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

had made no improvements to the Subject Property that would cause an increase. They asserted that a property in the neighborhood had been listed 6 weeks ago for \$47,000. They did not provided the Commission with any property record cards for any properties in the neighborhood.

17. The Appraiser explained that the Subject Property had been valued using the sales comparison approach using sales from the Subject Property's neighborhood.
18. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>13</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>14</sup>
19. The Commission finds that mere fact that the Subject Property's assessed value increased from a previous year is not clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
20. Further, the County Appraiser explained that the Subject Property was valued using a statutorily permissible mass appraisal method.<sup>15</sup>
21. While the Taxpayers expressed concerns that the Subject Property was not equalized with other properties in the neighborhood, the Taxpayers did not provide any evidence of the actual or assessed values of any other properties.
22. 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.
23. 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. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 17,800
<u>Improvements</u>	<u>\$114,400</u>
Total	\$132,200

---

<sup>13</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>14</sup> 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).

<sup>15</sup> Neb. Rev. Stat. §77-212 (Reissue 2009).

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 January 28, 2014.

Signed and Sealed: January 28, 2014

---

Nancy J. Salmon, Commissioner