

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

Sharon Wallahan,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13R 856

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

Background

1. The Subject Property (Subject Property) includes a 1,848 square foot residence located at 1027 S. 90<sup>th</sup> Street, Omaha, Nebraska. The legal description of the parcel is found in the Case File.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$149,900 for tax year 2013.
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 \$149,900 for tax year 2013.
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 July 24, 2015, at the Commission’s Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Sharon Wallahan (the Taxpayer) was present at the hearing.
8. Larry Thomsen and Mary Cederberg, employees of the County Assessor, were present for 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>

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 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).

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>2</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>3</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>4</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>5</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>6</sup>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>7</sup>

#### Findings of Fact and Conclusions of Law

15. The Taxpayer purchased the Subject Property for \$157,000 on July 7, 2015. Sharon Wallahan stated that she overpaid \$20,000 for the property for sentimental reasons. Wallahan stated that her family had been a previous owner of the property when she was a child.
16. Wallahan submitted an estimate of repairs that had been prepared April 21, 2010, by J&J General Contracting Painting & Remodeling (J&J). The inspection was done by J&J and two representatives of Security National Bank. Before itemizing estimated work, the document states that, “[i]t was raining and we were in a time crunch when inspecting the property.” J&J listed items “needing work,” totaling \$44,552, based upon “best guesstimates.” The Commission gives little weight to the J&J estimate of repairs in relation to the actual value of the Subject Property more than two years later on the effective date of January 1, 2013.

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<sup>2</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>3</sup> *Id.*

<sup>4</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>5</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>6</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>7</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

17. Wallahan stated that another property down the street from the Subject Property, at 921 S. 90<sup>th</sup> sold for \$135,000. However, she did not provide the property record card as required in the Commission's Order for Hearing.
18. The Taxpayer provided no other competent evidence regarding the actual value of the Subject Property.
19. The property record card for the Subject Property indicated that after an external inspection on February 29, 2012, the County Assessor changed the condition rating from average to fair. The Commission finds that a condition rating of fair seems appropriate in light of the two inspections that were conducted in 2010 and 2012.
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 clear and convincing evidence that the determination of the County Board was unreasonable or arbitrary.
22. 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 taxable value of the Subject Property for tax year 2013, is affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 24,500
<u>Improvements</u>	<u>\$125,400</u>
Total	\$157,000

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 (2014 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 2013.
7. This Decision and Order is effective on July 28, 2015.

Signed and Sealed: July 28, 2015

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Robert W. Hotz, Commissioner