

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

Hung N. Nguyen,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14R 605

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

Background

1. The Subject Property includes a 2,509 square foot residence built in 2006, and located at 16028 Fowler Avenue, Omaha, Nebraska. The legal description of the Subject Property is in the Case File.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$225,500 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$225,500 for tax year 2014.
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 June 12, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Hung N. Nguyen (the Taxpayer) was present at the hearing.
8. Kevin Corcoran and Mary Cederberg, employees of the County Assessor, were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</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 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>3</sup>

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</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).

<sup>3</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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 sufficient competent evidence to justify its action.”<sup>4</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>5</sup>
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.<sup>6</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>
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.<sup>8</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>9</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer purchased the Subject Property on April 7, 2011, for \$210,000.
17. The County Assessor used a cost approach to determine the value of the improvements of the Subject Property for Tax Year 2014. The County Assessor developed a “Cost Detail of Building” (Cost Detail) to determine the value of the improvements, including a deduction of 9% for depreciation,<sup>10</sup> resulting in a total improvement value of \$206,500.
18. It appears the County Board relied upon the assessed value determined by the County Assessor utilizing the cost approach. While the Cost Detail indicated a total improvement value of \$206,500, the Commission is concerned that the actual total of the values listed on the Cost Detail (\$228,260) does not agree with the stated total for replacement cost new (\$238,866). Even if appliances are added to this total, the numbers do not “add up.”<sup>11</sup> Neither of the employees of the County Assessor was able to explain this apparent discrepancy with any certainty. Without an explanation for this difference, the Cost Detail is cryptic, and does not give the Taxpayer an understanding of how the

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<sup>4</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</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>9</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>10</sup> The depreciation adjustment included 6% for physical depreciation and 3% for functional obsolescence.

<sup>11</sup> The appliances total, shown on the “Douglas County Property Profile,” is \$3,593.

cost approach was used to determine the taxable value of the improvements on the parcel. The Commission has concern regarding the transparency and accessibility of the process when the Cost Detail cannot be more fully explained.

19. The Taxpayer asserted that the Subject Property was overassessed as compared to other comparable properties. He provided information for three alleged comparable properties. However, the documents he provided were web page printouts, not property record files, as required by the Commission in its Order for Hearing. Without the property record files for the alleged comparable parcels, the Commission is unable to appropriately compare those parcels to the Subject Property for purposes of an equalization analysis.
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 arbitrary or unreasonable and the decision of the County Board should be affirmed.

#### 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 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$225,500.
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 2014.
7. This Decision and Order is effective on June 17, 2015.

Signed and Sealed: June 17, 2015

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Robert W. Hotz, Commissioner