

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ann Hough,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13R 455

Decision and Order Affirming
County Board of Equalization

1. A Single Commissioner hearing was held on Tuesday, July 5, 2016, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, NE, before Commissioner Steven A. Keetle.
2. Ann Hough was present at the hearing (Taxpayer).
3. Larry Thomsen from the Douglas County Assessor's office was present for the Douglas County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a 3059 square foot residential property located on 1.15 acres, with a legal description of: Hough Estate, Lot 2 Block 0 Irreg. 1.15AC, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$388,500 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$296,932 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$388,500 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board 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 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

¹ 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).

² *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.”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 Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer’s first allegation is that the assessed value of the Subject Property increased approximately 30% from the previous year’s value. The Taxpayer alleged that this increase was unreasonable. Further, the Taxpayer argued that the properties offered as comparable by the County decreased in value from the prior year.
16. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
17. The Taxpayer’s second allegation is that the assessed value of the Subject Property was not equalized with the value of the neighboring property.
18. The Subject Property is located on a significantly smaller parcel of land than the neighboring property.
19. The improvements on the Subject Property are rated at a higher quality and condition than the neighboring property.
20. The Subject Property and the neighboring property are not comparable for purposes of valuation or equalization.

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(9) (2014 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 Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

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).

21. 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.
22. 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 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	\$ 18,600
<u>Improvements</u>	<u>\$369,900</u>
Total	\$388,500

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 2013.
7. This Decision and Order is effective on Thursday August 11, 2016.

Signed and Sealed: August 11, 2016.

Steven A. Keetle, Commissioner