

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Molly Romero
and
Green House Garden, LLC,
Appellant(s),

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 14R 043 & 15R 0124

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a former single family dwelling converted to a duplex with a garage converted to a third living unit. The legal description is: Dundee Place, Lot 12 Block 100, ½ Vac Alley Adj & -ES E 6 inches- S 60.5 Ft Lt 11 & S 60.5 Ft Lt 12, Section 19, Township 15, Range 13, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$276,600 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$162,600 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$276,600 for tax year 2014.
5. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$276,600 for tax year 2015.
6. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$116,800 for tax year 2015.
7. The County Board determined that the taxable value of the Subject Property was \$235,000 for tax year 2015.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on November 18, 2016, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
10. Molly Romero and Mark Pluhacek were present at the hearing for (Taxpayer).
11. Larry Thompsen and Kevin Corcoran, of the Douglas County Assessor/Register of Deeds Office were present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
13. The Commission's review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the characteristics of the Subject Property were incorrect in that building one didn't have any fireplaces and that the size of the basement square footage was incorrect.
20. The Taxpayer has demonstrated that building one does not have any fireplaces and that the assessment should be reduced accordingly.

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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).

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.).

21. The Taxpayer alleged that building two on the Subject Property didn't have central heating and air conditioning as indicated in the County's Property Record File but rather separate heating and cooling units for each floor.
22. The County's testimony was that central heating and air conditioning and separate heating and cooling units for each floor as in building two of the Subject Property were both valued in the same manner and both included under the Central H&A characteristic in the County's assessment model.
23. The Taxpayer alleged that the Subject Property was not assessed in a uniform and proportionate manner with other similar property.
24. The Taxpayer presented the Property Record Files for several properties in the area of the Subject Property that had sold between 2004 and 2009.
25. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
26. Approximately one third of the properties presented by the Taxpayer were multi-unit properties with four or more living units.
27. Multi-unit properties with four or more living units are classified as commercial properties according to professionally accepted mass appraisal methodologies.
28. The County assessed commercial multi-unit properties with four or more living units using a different assessment model than residential properties with two or three living units.
29. Multi-unit properties with four or more living units are classified as commercial properties and are not comparable to the Subject Property.
30. The Taxpayer alleged that the Subject Property is not assessed in a similar manner per square foot of assessed value as other comparable properties.
31. However, the information presented to the Commission indicates that the Subject Property and the other residential properties presented by the Taxpayer were valued based on an assessment model that assigned different dollar amounts to different characteristics.
32. These values per characteristics were applied to each of the properties before the Commission with differences in the assessed values being accounted for in differences in characteristics between the properties, such as square feet of living area, garages, number of baths, condition, type of construction, etc., with the exception of one characteristic as follows.
33. The buildings on the Subject Property are of the "Frame Siding" and "Frame Vinyl" type of construction.
34. The Taxpayer presented the Property record files of other properties of the "Frame Siding" and "Frame Vinyl" type of construction which received a discount factor due to the characteristic "Frame Siding" for each square foot of above ground living area.

⁹ See generally, *International Association of Assessing Officers*, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

35. There was nothing in the Property Record Files or other information and discussion presented to the Commission which indicated why some of the “Frame Siding” and “Frame Vinyl” type of construction properties received a discount and others, like the Subject Property, did not.
36. The Commission finds that the Subject Property should receive the “Frame Siding” discount as applied to other similar properties.
37. The Commission finds and determines that the assessed value of the improvements on the Subject Property be reduced by the amount of \$18,046 to account for the lack of fireplaces and the application of the “Frame Siding” factor for tax years 2014 and 2015.¹⁰
38. That the assessed value of the improvements on the Subject Property is \$241,554 for tax year 2014 and \$199,954 for tax year 2015.
39. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
40. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 and 2015, are Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 17,000
<u>Improvements</u>	<u>\$241,554</u>
Total	\$258,554

3. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 17,000
<u>Improvements</u>	<u>\$199,954</u>
Total	\$216,954

4. 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 (2016 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

¹⁰ \$10,000 (fireplace) + \$5,094 (Frame Siding factor building 1 (1,698 sq ft x \$3 per square foot discount)) + \$2,952 (Frame Siding factor building 2 (984 sq ft x \$3 per square foot discount)) = \$18,046.

6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2014 & 2015.
8. This Decision and Order is effective on February 3, 2017.

Signed and Sealed: February 3, 2017

Steven A. Keetle, Commissioner