

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

Lee A. Boehm,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14R 657

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

**Background**

1. The Subject Property is 3,064 sq. ft. residential property, with a legal description of: Waterford Rep 3 Lot 27 Block 0 77x130, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$255,400 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 \$219,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$255,400 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 August 31, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Lee A. Boehm was present at the hearing (Taxpayer).
8. Larry Thomsen, Senior Residential Appraiser for the Douglas County Assessor/Register of Deeds Office was present for the County Board.

**Applicable Law**

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date 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>
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

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

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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).

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>

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

#### Findings of Fact & Conclusions of Law

16. The Taxpayer purchased the Subject Property in 2012 for \$219,000, after a foreclosure and asserted that it should be assessed at that amount for tax year 2014.
17. The Taxpayer presented the Real Estate Transfer Statements for two properties located near to the Subject Property that sold in 2013 and 2014 for less than their assessed value. The Taxpayer indicated only the square footage and style of these sold properties but did not bring the Property Record File (PRF) for these properties or provide any other information regarding quality, condition, basement finish, etc. for these properties.<sup>9</sup>
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
19. The Commission is unable to determine if the Taxpayer’s provided properties are comparable to the Subject Property based on the information provided to it at the hearing.
20. The Taxpayer argued that because other properties in his subdivision decreased in value for tax year 2014, the assessed value for the Subject Property should decrease as well.

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<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(9) (2016 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. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>9</sup> The Order for Single Commissioner Hearing and Notice issued in this matter on June 2, 2017, states: “NOTE: Copies of the County’s Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed ... A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.”

<sup>10</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

21. The Taxpayer offered a list of assessed values for properties on the same street as the Subject Property and a few properties on the next street over from the Subject Property which indicate that the assessed values of 10 properties near the Subject Property decreased and the Subject Property's assessed value increased for 2014.
22. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>11</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>12</sup>
23. The Taxpayer's list of assessed values does not indicate any other information regarding the properties listed such as size, style, quality, condition, basement finish, etc. The Taxpayer did not provide the PRF for any of the listed properties.
24. The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach for calculating actual value.<sup>13</sup> Without information about the characteristics of these properties to allow the Commission to determine the comparability of these properties, the Commission is unable analyze the Taxpayer's allegation.
25. The County indicated that the assessed value of the Subject Property was determined using a Multiple Regression Analysis model. This model used factors such as location, quality, condition, style, and square footage as well as other amenities such as basement finish, garages, etc. to determine assessed values for the both sold and unsold properties in the Subject Property's neighborhood base on residential sales.
26. The County presented the Property Record File for the Subject Property demonstrating how the value of the Subject Property was determined based on its characteristics.
27. The County presented sales information for three comparable properties as well as information regarding the characteristics of these sold properties such as style, quality, condition, square footage, garages, basement finish etc.
28. 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.
29. The Taxpayer has not 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 affirmed.

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<sup>11</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>12</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>13</sup> See generally, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974) (holding that the assessed values of real property was not admissible evidence of actual value in a condemnation case accepting that while assessed values are required to be set at actual value, errors may occur resulting in an assessed value that is not at actual value).

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:

Land	\$ 37,000
<u>Improvements</u>	<u>\$218,400</u>
Total	\$255,400

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 (2016 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 December 8, 2017.

Signed and Sealed: December 8, 2017

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Steven A. Keetle, Commissioner