

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Neal R. Goshorn,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1161

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

1. A Single Commissioner hearing was held on October 24, 2013, at a Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
2. Neal R. Goshorn was present at the hearing.
3. Larry Thomsen was present for the Douglas County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a 2,512 square foot two-story residence, built in 2010, and located at 19323 J. Street, Omaha, Douglas County, Nebraska. The legal description and property record file for the Subject Property are found in the Case File.

Background

5. The Douglas County Assessor assessed the Subject Property at \$270,800 for tax year 2012.¹
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$230,000 for tax year 2012.²
7. The County Board determined that the taxable value of the Subject Property was \$253,700 for tax year 2012.³
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 is de novo.⁴

¹ See Case File.

² See Case File.

³ See Case File.

⁴ See, Neb. Rev. Stat. §77-5016(8) (2012 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.”⁵ 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.”⁶
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.⁷
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
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.⁹
14. Larry Thomsen provided the Commission with an Assessment Report (Report), dated May 24, 2013. The Report includes the Property Record File for the Subject Property.
15. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁰
16. As part of a reappraisal of what is identified as neighborhood 43941, the Assessor conducted an external inspection of the Subject Property on November 15, 2010. An internal inspection was not done at that time.
17. On February 19, 2013, subsequent to Neal Goshorn filing this appeal and in preparation for this hearing, the Assessor requested an internal inspection of the Subject Property. Neal Goshorn stated that an internal inspection was unnecessary because he did not dispute the square footage calculations listed in the property record card.
18. During the 2012 Protest process, the Referee¹¹ for the County Board agreed with the Assessor’s assessed value of the Subject Property at \$270,800, but the Referee Coordinator disagreed. The Coordinator commented, “[r]educd valuation due to equalization with similar properties on assessor valuation grid. Support \$253,700 valuation.” The County Board agreed with the taxable value determined by the Referee Coordinator at \$253,700. There was nothing in the record of this appeal to confirm what

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹¹ Neb. Rev. Stat. §77-1502.01.

parcels were considered by the Referee Coordinator or the County Board in reaching this valuation conclusion.

19. However, there was also no cost approach cost detail in the record to support the assessed value of \$270,800.
20. Neal Goshorn provided a document showing the purchase price and valuation amount of multiple properties that were asserted to have been built by the same builder who built the Subject Property. However, no Property Record Files were presented to allow the Commission to determine the comparability of these parcels to the Subject Property, as required by the Commission's Order for Hearing.
21. The presumption being in favor of the determination by the County Board, and there being nothing in the record to show that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions, that presumption is not overcome.
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 value of the Subject Property for tax year 2012 is affirmed.
2. The taxable value of the Subject property for tax year 2012 is \$253,700.
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 (2012 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 2012.
7. This Decision and Order is effective on October 30, 2013.

Signed and Sealed: October 30, 2013

Robert W. Hotz, Commissioner