

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paul J. Kramper,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0441

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

Background

1. The Subject Property is a 2,952 square foot residential property with a legal description of: Fairacres Add, Lot 69 Block 0, S 67.17 W 207.5 ft Lt 68 & N 50 W 202.9 ft 117.17 X 205.1 ft, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$767,600 for tax year 2016.
3. Paul J. Kramper (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$650,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$767,600 for tax year 2016.
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 September 24, 2018, at the Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michaela Kramper was present at the hearing for the Taxpayer.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) 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 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

² Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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).

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

Findings of Fact & Conclusions of Law

16. The Taxpayer discussed the location of the Subject Property and its proximity to a parking lot and storage shed on a neighboring property as well as its proximity to Dodge Street, a major East West road in Omaha, Nebraska.
17. The Taxpayer did not present information that would quantify the impact of the location of the Subject Property on its assessed value.
18. The Taxpayer alleged that the assessed value of the Subject Property has increased too much since it was purchased in 2012.
19. The Nebraska Supreme Court has held that 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

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

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).

20. The Taxpayer alleged that the Subject Property was assessed at a higher value than its sales price while other comparable properties were assessed at a lower value than their sales price.
21. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
22. The Taxpayer did not provide the Property Record Files for the alleged comparable properties to allow the Commission to determine if they were comparable to the Subject Property or how their assessed values were determined as compared to the assessed value of the Subject Property.¹²
23. The County Appraiser indicated that after reviewing the information presented at the hearing regarding the Subject Property and a review of sales in the area, his opinion of value for the Subject Property as of the assessment date would be \$180,600 for the land and \$536,800 for the improvement for a total assessed value of \$717,400.
24. Based on the information presented at the hearing the Commission finds that the assessed value of the Subject Property as of the 2016 assessment date was \$717,400.
25. 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.
26. 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 Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$180,600
<u>Improvements</u>	<u>\$536,800</u>
Total	\$717,400

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 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² The Order for Single Commissioner Hearing and Notice issued in this matter on June 29, 2018, specifically includes the following instruction: *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.*

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on May 22, 2019.

Signed and Sealed: May 22, 2019

Steven A. Keetle, Commissioner