

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kathryn A. Ekeler,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0238

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,577 square foot ranch style home, with a legal description of: Linden Estates 2nd Add, Lot 154 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$716,900 for tax year 2016.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$610,440 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$716,900 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 February 2, 2018, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kathryn A. Ekeler and Mike Burke were present at the hearing (Taxpayer).
8. Larry Thomsen, a Senior Residential Appraiser with the Douglas County Assessor/Register of Deeds Office (the Appraiser) were 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 See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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).

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 alleged that the Subject Property was over assessed based on recent sales in the same neighborhood as the Subject Property
17. The Taxpayer discussed three properties that sold in the same neighborhood as the Subject Property.
18. The Taxpayer did not present the Property Record Files (PRF) for the sold properties to allow the Commission to determine their comparability to the Subject Property. Additionally, the information presented indicated that they all had a different condition rating than the Subject Property. Two were of a different style than the Subject Property and no information regarding their condition rating was presented.
19. Based on the information presented the Commission cannot determine that the sold properties were comparable to the Subject Property for assessment purposes.
20. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other similar properties.

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) (2016 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) (2016 Cum. Supp.).

21. The Taxpayer presented the PRFs for two properties they alleged were comparable to the Subject Property.
22. The differences in assessed values between the Subject Property and the two alleged comparables appear to be accounted for in differences in characteristics between the Subject Property and the alleged comparables. For example, the Subject Property has a higher land value than the alleged comparables for a smaller sized lot, however the Subject Property is the only one of the three with a walkout basement, the properties with more bathrooms/plumbing fixtures have a greater plumbing adjustment, and the physical depreciation increases as the age increases.
23. 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.
24. 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.

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 Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$163,700
<u>Improvements</u>	<u>\$553,200</u>
Total	\$716,900

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 2016.
7. This Decision and Order is effective on March 29, 2018.

Signed and Sealed: March 29, 2018

Steven A. Keetle, Commissioner