

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas J. Dugdale Jr. et al.,
Appellant,

Case Nos: 16R 0390, 17R 0480 & 18R 0287

v.

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

Douglas County Board of Equalization,
Appellee.

Background

1. The Subject Property is a residential parcel improved with a 1,940 square foot two-story brick residence with a legal description of: Drews Dundee Heights Lot 12 Block 3 50x123, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$207,400 for tax year 2016.
3. Thomas J. Dugdale Jr. et al., (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$168,303.37 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$207,400 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$232,900 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$212,900 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$232,900 for tax year 2017.
8. The County Assessor assessed the Subject Property at \$239,900 for tax year 2018.
9. The Taxpayer protested this value to the County Board and requested an assessed value of \$205,450 for tax year 2018.
10. The County Board determined that the taxable value of the Subject Property was \$239,900 for tax year 2018.
11. The Taxpayer appealed the determinations of the County Board for tax years 2016, 2017, and 2018 to the Tax Equalization and Review Commission (the Commission).
12. A Single Commissioner hearing was held on October 30, 2018, at the Omaha State Office Building, 1313 Farnam St., Rm E (301E), Omaha, Nebraska, before Commissioner Steven Keetle.
13. Thomas J. Dugdale Jr. was present at the hearing.
14. 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

15. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
16. The Commission's review of the determination of the County Board of Equalization is de novo.²
17. 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
18. 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
19. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
20. 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
21. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

22. The Taxpayer alleged that the County Board's determination of the assessed value for 2017 did not consider the recommendation of the referee that conducted the protest hearing.
23. The record of the referee proceedings prior to the determination of the protest by the County Board for the 2017 tax year indicates that the referee made an initial

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

² See, 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).

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).

recommendation that the assessed value of the Subject Property be reduced. This same report indicates that the referee coordinator that reviewed the protest prior to the determination of the County Board commented that the Taxpayer presented insufficient evidence to support a reduction in the assessed value and recommended that the assessed value remain at the amount determined by the County Assessor's office. Based on this information it is not unreasonable or arbitrary that the County Board chose to leave the assessed value at the amount set by the County Assessor's office as recommended by the referee coordinator regardless of the recommendation of the initial referee.

24. The Taxpayer alleged that the assessed value of the Subject Property does not take into account the condition of the Subject Property or its lack of central air conditioning.
25. The Taxpayer presented photographs of the Subject Property and alleged that the condition of the property as of the assessment dates was lower than that indicated on the Property Record File (PRF) for the Subject Property.
26. The PRF for the Subject Property indicates that in tax year 2016 and 2017 there was an adjustment to the assessed value of the Subject Property based on a condition rating of Fair rather than Average for the Subject Property.
27. For tax year 2018 the PRF for the Subject Property indicates that the County Assessor developed a new model for determining assessed values. The PRF further indicates that the assessment of the Subject Property utilized a condition rating of Good and the assessment was not adjusted to account for a lower condition of the property as the old model had done for the two prior tax years.
28. In order to determine the impact of the condition of the property on its assessed value the Commission would need information to quantify that impact. No information was presented regarding the cost to bring the condition of the Subject Property up to a higher condition rating such as is indicated on the 2018 PRF.
29. The Taxpayer presented some information regarding two sales that occurred in 2014 and 2015 but that information was not such that the Commission was able to determine if those properties were in fact comparable to the Subject Property as the PRF or other equivalent information was not presented.
30. While the Taxpayer has presented information to indicate that an adjustment to the assessed value of the Subject Property due to its condition may be appropriate for tax year 2018, there is not sufficient information presented to allow the Commission to quantify the impact of this adjustment on the assessed value of the Subject Property in order to grant relief.
31. The Taxpayer further alleged that the assessed value of the Subject Property does not take into account its lack of central air conditioning and that its assessed value should be reduced by the amount that it would take to install central air conditioning.
32. The Taxpayer presented information regarding the current hot water heating and window unit cooling systems in the Subject Property along with information regarding the work required to install central air conditioning or its equivalent in the Subject Property.

33. The PRF for each of the assessment years indicate that the Subject Property is not being assessed for central air conditioning but rather for hot water radiant heat only.
34. The Taxpayer has presented information to indicate the cost of installing a central air conditioning system but information has not been presented to indicate that the County Assessor and County Board failed to take this factor into account when assessing the Subject Property and that a reduction would be appropriate. Without information regarding the assessments of other properties with or without central air conditioning, information regarding sales of comparable properties with or without air conditioning, or other market information that the assessment fails to account for the lack of central air conditioning, the Commission is unable determine if a reduction in the assessed value of the Subject Property is appropriate.
35. 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 for tax years 2016 and 2017. 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 for tax years 2018.
36. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable for tax years 2016, 2017 or 2018 and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2016, 2017, and 2018 are affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 12,900
<u>Improvements</u>	<u>\$194,500</u>
Total	\$207,400

3. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 51,100
<u>Improvements</u>	<u>\$181,800</u>
Total	\$232,900

4. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 51,100
<u>Improvements</u>	<u>\$188,800</u>
Total	\$239,900

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2016, 2017, and 2018.
9. This Decision and Order is effective on August 14, 2019.

Signed and Sealed: August 14, 2019

Steven A. Keetle, Commissioner