

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Timothy S. Zweiback,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 16R 0399 & 17R 0405

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

Background

1. The Subject Property is a 3,472 square foot ranch style residential property, with a legal description of: Rockbrook, Lots 7 & 8 Block 14, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$566,300 for tax year 2016.
3. Timothy S. Zweiback (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$417,832 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$566,300 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$774,300 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$365,343 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$620,000 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on August 17, 2018, at the Omaha State Office Building, 1313 Farnam St., Rm 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. The Taxpayer was present at the hearing.
11. Jennifer Clark, Deputy Douglas County Attorney and Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) were present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

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

13. The Commission’s review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of comparable properties for tax years 2016 and 2017.
20. The Taxpayer presented information regarding three groups of properties: two properties that the Taxpayer felt were most comparable to the Subject Property (Taxpayer’s Comps), three properties that were found in the County Assessor’s subdivision sales results (the Sales Comps), and the five properties that are adjacent to the Subject Property (the Adjacent Comps).

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).

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).

21. The Taxpayer presented information that demonstrated that the per square foot valuation of the above ground living space on the Subject Property was higher than the per square foot valuation of the above ground living space on all of the other properties presented.
22. The Taxpayer alleged that because of this difference in per square foot values he was entitled to relief under the standard set by the Court in *Scribante* which held that “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁹
23. The information provided at the hearing further demonstrated that differences in the per square foot assessed values for all of the properties presented were explained by differences in the physical characteristics of these properties.
24. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰ A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property.¹¹
25. The Subject Property is the newest of the properties and has the highest quality rating of all of the properties presented.
26. The properties presented as the Taxpayer’s Comps are close to the same age and above ground square footage as the Subject Property, but they are both two story homes where the Subject is a ranch style home. Additionally, the Subject Property has more fireplaces, a larger garage, and more square feet of finished basement than the Taxpayer’s Comps. Without adjustments to account for these features and physical characteristics, the Commission finds that the Taxpayer’s Comps are not comparable to the Subject Property.
27. The properties presented as the Sales Comps are all ranches with close to the same above ground square footage as the Subject Property. Two of the three have a higher condition rating than the Subject Property, but they are approximately 40 years older, lack walkout basements, have fewer square feet of finished basement, and have smaller garages than the Subject Property. Without adjustments to account for these features and physical characteristics, the Commission finds that the Sales Comps are not comparable to the Subject Property.
28. While three of the five properties presented as Adjacent Comps are ranch style properties and one is a raised ranch, all of them are significantly smaller and older than the Subject Property. None of the Adjacent Comps has a walkout basement and one of them only has a crawl space. The Subject has significantly more square feet of finished basement, a larger garage and larger decks and patios than the Adjacent Comps. Without adjustments to account for these features and physical characteristics, the Commission finds that the Adjacent Comps are not comparable to the Subject Property.

⁹ *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

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

¹¹ See generally, Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

29. For tax year 2017 the Douglas County Assessor’s office developed a new assessment model that was applied to the Subject Property, the Taxpayer’s Comps, the Sales Comps, and the Adjacent Comps. The new assessment model resulted in higher assessed values for the Subject Property and the Taxpayer’s Comps and lower assessed values for the Sales Comps and the Adjacent Comps. These differences in assessed value can be attributed to different characteristics and amenities contained in those properties and their different contribution to value for the 2017 tax year.
30. The per square foot values of the Subject Property as compared to the per square foot values of the other properties presented are not assessed at materially different levels but rather accounted for by differences between the physical characteristics of the properties (i.e. lower quality, more square feet of finished basement, number of fireplaces).
31. 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.
32. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable, 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 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$100,700
<u>Improvements</u>	<u>\$465,000</u>
Total	\$566,300

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

Land	\$110,000
<u>Improvements</u>	<u>\$510,000</u>
Total	\$620,000

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.

7. This Decision and Order shall only be applicable to tax years 2016 and 2017.
8. This Decision and Order is effective on February 8, 2019.

Signed and Sealed: February 8, 2019

Steven A. Keetle, Commissioner