

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry E. Ledent,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0445

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

Background

1. The Subject Property is a two-story brick residential property, with a legal description of: Pratt Ranch, Lot 1 Block 0 Irreg. E 111.40 ft Lt 1 & W 7.5 ft Vac Kilpatrick St Adj, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$322,800 for tax year 2016.
3. Larry Ledent (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$276,400 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$322,800 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 August 24, 2018, at the Omaha State Office Building, 1313 Farnam, Rm 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. The Taxpayer was present at the hearing.
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 alleged that the Subject Property is zoned agricultural and therefore should be assessed as agricultural and horticultural land.
17. In order to meet the definition of agricultural and horticultural land under Nebraska law the parcel must be primarily used for agricultural or horticultural purposes. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.⁹
18. The information presented to the Commission indicated that the Subject Property is not primarily used for agricultural and horticultural purposes but rather as a residence and the land component is associated with the home built on that property.
19. The Taxpayer has failed to demonstrate that the Subject Property is agricultural or horticultural land.
20. The Taxpayer alleged that the quality and condition rating placed on the Subject Property was too high.

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 Neb. Rev. Stat. §77-1359 (1) (Reissue 2018).

21. The improvement on the Subject Property is a two-story brick residence built in 1880. The Taxpayer indicated that while the Subject Property has been remodeled over the years the original 1880 structure has not been added onto.
22. The Taxpayer presented information regarding the condition of the exterior and interior of the residence on the Subject Property, as well as some of the repair and maintenance issues that existed with the Subject Property as of the assessment date, which would indicate that a condition rating of average should be applied to the Subject Property.
23. The information presented to the Commission indicated that the difference in the assessment of the Subject Property caused by changing the condition rating from Good to Average would be \$12,500.
24. The Taxpayer alleged that the Subject Property was being assessed for a pole barn that is actually located on a different parcel of property.
25. The Taxpayer offered information regarding the location of the pole barn in relation to the land component of the Subject Property.
26. The Taxpayer has demonstrated that the pole barn, listed as an improvement on the Subject Property and valued at \$18,563 for tax year 2016, is actually on a different parcel of property and should be removed from the determination of assessed value of the Subject Property
27. Based on the information provided to the Commission the assessed value of the Subject Property for tax year 2016 should be \$15,800 land and \$275,900¹⁰ improvements, for a total valuation of \$291,700.
28. 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.
29. 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 affirmed/vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 15,800
<u>Improvements</u>	<u>\$275,900</u>
Total	\$291,700

¹⁰ \$306,985 - \$12,500 - \$18,563 = \$275,922, rounded to \$275,900.

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 (Reissue 2018).
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 22, 2019.

Signed and Sealed: March 22, 2019

Steven A. Keetle, Commissioner