

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ellen Douglas Trust,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0285

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

Background

1. The Subject Property is a residential parcel improved with a 3,916 square foot two story residence, with a legal description of: Indian Creek Lot 209 Block 0 Lot 208 & Irreg. Swstly 39.58 Ft Lot 209 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$512,000 for tax year 2017.
3. The Ellen Douglas Trust (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$440,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$440,000 for tax year 2017.
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 November 6, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Ellen Douglas 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) and Xavier Cooper of the Douglas County Assessor/Register of Deeds Office 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 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

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 land valuation of the Subject Property was not supported by market sales.
17. The Taxpayer stated that a nearby property was selling for less per acre than the land component of the Subject Property. The Taxpayer did not offer the Property Record File (PRF) or other information regarding the characteristics of this parcel of property or the terms of the sale for the Commission to consider. The information that was offered indicated that the property offered for sale abutted to Fort Street, a major east west road in Northwest Douglas County and is not comparable to the Subject Property.
18. The Taxpayer alleged that the value of the land component of the Subject Property is not equalized with other properties in the area, particularly the property located next door to the Subject Property.
19. The Taxpayer offered a map of the Subject Property’s subdivision and information from the Assessor’s web site regarding several properties located near the Subject Property.

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).

20. The information presented by the Taxpayer indicates that residential parcels in the area are valued at the same amount per square foot as the Subject Property with two exceptions: properties with golf course frontage are valued at a higher amount per square foot, and a much smaller, half lot located next to the Subject Property is valued at a significantly lower amount per square foot.
21. The Taxpayer alleged that the half lot located next to the Subject Property is owned by the same party as the lot adjacent to the half lot on the opposite side from the Subject Property and that they were used together as if they were a single lot.
22. The County Assessor stated that the lower value on the half lot is due to its size and the inability to build a residence on a half lot, and that because it was a separate parcel it was valued separately.
23. The Taxpayer has not demonstrated that the assessed value of the land component of the Subject Property was not equalized with the land component of other comparable properties.
24. The Taxpayer alleged that the overall valuation of the Subject Property was not equalized with the assessed valuation of other comparable properties.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
26. “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. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹⁰
27. The Taxpayer offered the real estate transfer statements for four properties located in the same subdivision as the Subject Property as well as selected information from the County Assessor’s web site that indicated that those properties sold for less than their assessed values.
28. The Taxpayer did not present the PRFs for the parcels that she alleged were comparable to the Subject Property. Without the details contained in the PRF, the Commission is unable to determine the characteristics of these properties. Nor can the Commission determine the contributions to value of the features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹¹
29. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 16, 2019, includes the following:

NOTE: *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

used in determining the value attributed to each of the characteristics of residential properties in the area for tax year 2017, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.

30. Where the Taxpayer's sales occurred within the time frame utilized by the County Assessor they were included in the list of sales in the Subject Property's economic area. The listing of qualified sales contained properties that sold for less than their assessed value but also contained properties that sold for more than their assessed value.
31. A review of all of the information presented appears to indicate that in order to achieve equalization with other properties in the area, the assessed value of the Subject Property after County Board action would need to be increased. However, the County Board did not present the PRFs for the parcels that were alleged to be comparable to the Subject Property contained on the list of qualified sales. Without the details contained in the PRF, the Commission is unable to determine the characteristics of these properties. Nor can the Commission determine the contributions to value of the features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.
32. 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.
33. 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 2017, is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 97,800
<u>Improvements</u>	<u>\$342,200</u>
Total	\$440,000

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 2017.
7. This Decision and Order is effective on January 8, 2021.

Signed and Sealed: January 8, 2021

Steven A. Keetle, Commissioner