

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dan J. Fried,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0349

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

Case Nos: 18R 0246 & 19R 0129

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

Background

1. The Subject Property is a residential parcel improved with a 1,726 square foot raised ranch style residence, with a legal description of: Armbrusts Rockbrook Lot 117 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$174,900 for tax year 2017.
3. Dan J. Fried, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$161,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$174,900 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$203,000 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$170,000 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$195,000 for tax year 2018.
8. The County Assessor assessed the Subject Property at \$200,500 for tax year 2019.
9. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2019.
10. The County Board determined that the taxable value of the Subject Property was \$200,500 for tax year 2019.
11. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
12. A Single Commissioner hearing was held on November 7, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.

13. Dan J. Fried was present at the hearing.
14. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser), Marjorie Gabriel, and Darla R. Schaff of the Douglas County Assessor/Register of Deeds Office were 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

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).

22. The Taxpayer alleged that the assessed value of the Subject Property is too high in relation to other comparable properties.
23. To support his allegation the Taxpayer presented the 2019 Property Record File (PRF) of the Subject Property and an adjacent property located at 9913 Ontario (the Adjacent Property) which he alleged was comparable to the Subject Property.
24. The County Board presented the 2017, 2018, and 2019 PRFs for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area for each of the tax years 2017, 2018 and 2019, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
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 2019 PRFs for the Subject Property and the Adjacent Property indicate that differences in their assessed values are based on differences in their characteristics.
28. For example, the Subject Property is a raised ranch style property and the Adjacent Property is a one and one-half story style property. Based on this difference in 2019 the Subject Property is assessed on a higher per square foot basis for above ground living area and a lower amount for basement. The Subject Property and the Adjacent Property both have wood decks that are assessed at the same amount per square foot with the Adjacent Property having a larger deck and higher total assessed value for wood deck in 2019. Both properties have a section of finished basement, the Subject Property having full basement finish (walled off areas, wall, floor, and ceiling covering) while the Adjacent Property only has minimal finish (wall or floor or ceiling covering) with a lower per square foot value for 2019.
29. The Taxpayer alleged that raised ranch and one and one-half story properties should be assessed at the same amount for above ground square footage. The qualified sales from the area presented by the County Board indicate that raised ranch style properties generally sell for more per square foot than one and one half story style properties in the Subject Property’s area.¹¹ This information is consistent with the generally increasing costs of constructing different styles of property.¹²

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 Additionally, two story properties sell for less per square foot than one and one half story properties and ranch style properties sell for more per square foot than raised ranch style.

¹² It generally costs more to construct a ranch style property with a roof over every square foot versus a two story style property where a section of roof covers two square feet of above ground area.

30. The Taxpayer alleged that the change in the assessed value of the Subject Property as compared to the Adjacent Property over time was unreasonable and arbitrary.
31. To support this allegation the Taxpayer argued that in 2014, 2015 and 2016 the Subject Property was assessed at a lower total valuation than the Adjoining Property and for tax years 2017, 2018 and 2019, the total assessed value of the Subject Property was higher than the Adjacent Property.
32. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹³ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁴ For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation. Additionally, the differences in the changes to the assessed values of the Subject Property and the Adjacent Property are only relevant to the current year's assessment if the differences resulted in values that were not equalized for the current assessment year.
33. The PRFs for the Subject Property, for example, show that the County's assessment model attributed \$5,000 of assessed value for a masonry fireplace in 2017 and reduced that amount to \$2,469.85 for tax years 2018 and 2019. In 2017 the County's assessment model did not attribute any value to a security system while in 2018 and 2019 the model attributed over \$3,500 to the assessed value calculation for a security system. The Commission is unable to analyze the change in the assessed value attributed to characteristics of the Adjacent Property because the Taxpayer did not provide the PRF for any year but 2019.
34. The Taxpayer alleged that the condition rating and characteristics of the Subject Property as determined by the County Assessor's office were incorrect.
35. The Taxpayer discussed the condition of the windows, particularly on the north side of the Subject Property, a retaining wall on the Subject Property, the carpeting and other floor coverings, the bathroom fixtures, and lack of a security system.
36. The Taxpayer did not provide information to demonstrate that the County Assessor's condition rating of average for the Subject Property was arbitrary, unreasonable or incorrect.
37. The Subject Property does not have a security system.
38. Based on the information presented the Commission finds that the value attributed to a security system should be removed from the assessed value of the Subject Property for tax years 2018 and 2019 resulting in a reduction in assessed value of \$5,025¹⁵ for each tax year.
39. The Commission finds and determines that the actual value of the Subject Property for tax year 2017 is \$174,900. The Commission finds and determines that the actual value of

¹³ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁴ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

¹⁵ \$3,557.64 x 1.4127 NBHD Adjustment = \$5,025 (rounded).

- the Subject Property for tax year 2018 is \$189,975. The Commission finds and determines that the actual value of the Subject Property for tax year 2019 is \$195,475.
40. For tax year 2017 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.
 41. For tax year 2017 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.
 42. For tax years 2018 and 2019 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.
 43. For tax years 2018 and 2019 the Taxpayer has 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 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 2017, is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 32,500
<u>Improvements</u>	<u>\$142,400</u>
Total	\$174,900

3. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 and 2019, are vacated and reversed.
4. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 30,000
<u>Improvements</u>	<u>\$159,975</u>
Total	\$189,975

5. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 30,000
<u>Improvements</u>	<u>\$165,475</u>
Total	\$195,475

6. 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).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each Party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax years 2017, 2018, and 2019.
10. This Decision and Order is effective on January 13, 2021.

Signed and Sealed: January 13, 2021

Steven A. Keetle, Commissioner