

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald M. Collins,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0372, 18R 0237
& 19R 0479

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

Background

1. The Subject Property is a residential parcel improved with a 2,866 square foot two story residence, with a legal description of: Waterford Lot 438 Block 0 Irreg., Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$371,800 for tax year 2017.
3. Donald M. Collins (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$310,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$371,800 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$371,800 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$310,000 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$371,800 for tax year 2018.
8. The County Assessor assessed the Subject Property at \$410,200 for tax year 2019.
9. The Taxpayer protested this value to the County Board and requested an assessed value of \$341,930 for tax year 2019.
10. The County Board determined that the taxable value of the Subject Property was \$371,800 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 October 23, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
13. Donald M. Collins 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

1. The Taxpayer alleges that the increase in the assessed value from the prior year's assessment is unreasonable and arbitrary and the increase in assessed value was greater than other properties in the neighborhood.

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).

2. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ Additionally, the differences in the changes of the assessed values of the Subject Property and other properties in the neighborhood is only relevant to the current year's assessment if the differences resulted in values that were not equalized for the current assessment year.
3. The Taxpayer stated at the hearing that he was not contesting the fair market value of the property, but rather, that the assessed value of the Subject Property is not equalized with the assessed value of other comparable properties.
4. The Taxpayer alleged that the Subject Property is assessed at a higher ratio of the sales price to the assessed value (assessed to sale ratio) than other nearby properties.
5. The Taxpayer prepared two spreadsheets: "neighborhood comparison" and "assessors' comparison" which contained sales dates, sales prices and 2017 assessed value for the Subject Property and other nearby properties.
6. The County Board presented the 2017, 2018 and 2019 Property Record File (PRF) 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 tax year 2017, 2018 and 2019 including the Subject Property.
7. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
8. "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."¹²
9. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the amount of the contribution to value of the various amenities or features of the other properties presented by the Taxpayer, such as size, quality, condition, basement size and finish, pools, patios, decks, etc.¹³
10. Looking at just the Taxpayer's neighborhood adjustment spreadsheet, the Subject Property has the second or third highest assessed to sale ratio of the nine sold properties

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 6, 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.

listed, and the assessed to sale ratio of the property next door to the Subject Property is much lower than that of the Subject Property. However, when all of the sales on the assessors' comparison spreadsheet and the sales presented by the County Board are reviewed, there is a wider range of assessed to sale ratios and the assessed to sale ratio of the Subject Property is neither excessively high or low.

11. If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment." ¹⁴ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."¹⁵
12. The Taxpayer further alleged that the valuation of the Subject Property on a per square foot basis is greater than that of other comparable properties.
13. The Taxpayer also presented a report that purported to contain information about the per square foot values and assessed to sale ratios of other comparable properties. This report, indicating it was prepared using an algorithm, contains a large number of properties but very little information about each one. The Commission is unable to determine that the properties in the report are comparable to the Subject Property.
14. The Subject Property, for example, is rated good quality of construction and good condition; it has over 1,100 square feet of basement finish, an in-ground swimming pool and a significant amount of patio. The report presented does not contain information about the quality or condition, basement size or finish, pools, patios, decks or out buildings, of the properties included in the report.
15. 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.
16. 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 year 2017, 2018 and 2019 are affirmed.

¹⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁵ *Id.* at 673, 94 N.W.2d at 50

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

Land	\$ 45,200
<u>Improvements</u>	<u>\$326,600</u>
Total	\$371,800

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

Land	\$ 45,200
<u>Improvements</u>	<u>\$326,600</u>
Total	\$371,800

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

Land	\$ 45,200
<u>Improvements</u>	<u>\$326,600</u>
Total	\$371,800

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 years 2017, 2018 and 2019.
9. This Decision and Order is effective on December 28, 2020.

Signed and Sealed: December 28, 2020

Steven A. Keetle, Commissioner