

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Katherine C. Lempka Trust,
Katherine C. Lempka,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0388 & 18R 0271

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

Background

1. The Subject Property is a residential parcel improved with a 3,508 square foot one and one-half story residence, with a legal description of: West Shores Lot 52 Block 0 Irreg, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$924,500 for tax year 2017.
3. Katherine C Lempka Trust, Katherine C Lempka, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of 720,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$890,000 for tax year 2017.
5. The County Assessor assessed the Subject Property at 968,000 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$796,400 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$947,200 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 October 23, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
10. Katherine (Kacey) Lempka was present at the hearing.
11. 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

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

¹ See, 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

1. The Taxpayer alleged that the increase in the assessed value from the 2016 tax year assessment to the 2017 assessment is unreasonable and arbitrary, and the Taxpayer further alleges that the increase in assessed value was greater than other properties in the neighborhood.
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 to the assessed

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).

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).

values of the Subject Property and other properties in the neighborhood are 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 alleged that the value of the land component of the Subject Property is not valued uniformly or proportionally with other land values in the same subdivision.
4. The Taxpayer presented information from the County Assessor's website regarding a vacant lot as well as the Property Record Files (PRFs) for the Subject Property and five other properties all located in the same neighborhood for tax year 2017 and 2018.
5. A review of the PRFs presented shows that the land components are valued at \$6.70-6.74 per square foot if they are between 23,000 square feet and 33,000 square feet and at \$6.05-6.06 per square foot if they are larger than 33,000 square feet for both tax years at issue.
6. This valuation methodology is consistent with professionally accepted appraisal principles that hold that "[a] given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land."¹¹
7. The vacant lot presented by the Taxpayer is in the same size category as the Subject Property but is valued at \$5.29 per square foot in tax year 2017 and \$4.49 per square foot in tax year 2018.
8. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹²
9. The Commission finds and determines that the equalized value of the land component of the Subject Property for tax year 2017 is \$172,110¹³ and the equalized value for the land component for tax year 2018 is \$146,170.¹⁴
10. The Taxpayer alleged that the value of the improvement component of the Subject Property is not valued uniformly or proportionally with other comparable properties in the same subdivision.
11. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁵
12. "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

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008)

¹² *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

¹³ 32,558.75 sq. ft. x \$5.29 psf = \$172,110

¹⁴ 32,558.75 sq. ft. x \$4.49 psf = \$146,170

¹⁵ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

comparable is made more like the subject, its price is brought closer to the subject's unknown value.”¹⁶

13. The County Board presented the 2017 and 2018 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 and 2018, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
14. A review of the PRFs for the Subject Property and the five properties presented as comparables demonstrates that, prior to the adjustment by the County Board, the value of the improvements on the Subject Property was uniform and proportionate with the value of the improvements on the other properties presented, but after the adjustment by the County Board, the value of the improvements on the Subject Property was not uniform and proportionate with the value of the improvements on the other properties presented.
15. The PRFs demonstrate that prior to the County Board adjustment per square foot values were determined for different features of the properties and then those per square foot values were applied to each property based on its characteristics, such as above ground square footage, basement square footage, fireplaces, decks, garage square footage, swimming pools, etc. Using this methodology the overall per square foot value of the Subject Property is higher than the other properties presented, not because of dis-equalized valuations but rather due to the Subject Property's features, such as more basement square footage than the other properties presented and a swimming pool.
16. The Taxpayer alleged that the condition rating of the Subject Property is too high based on the condition of the Subject Property and renovations done to other comparable properties to prepare them for sale.
17. The Taxpayer discussed the condition of the interior of the Subject Property. The Taxpayer offered no information about the alleged renovations done to the other comparable properties. The Commission is unable to find that the determination of the condition rating of the Subject Property or comparable properties was unreasonable, arbitrary or incorrect.
18. The Commission finds and determines that the assessed value of the improvement component of the Subject Property as determined by the County Board is not equalized with those of comparable properties.
19. The Commission finds and determines that the equalized value of the improvement component of the Subject Property for tax year 2017 is \$705,200 and the equalized value for the land component for tax year 2018 is \$768,000.
20. 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.

¹⁶ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

21. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board is arbitrary or unreasonable and the decisions of the County Board should be vacated.

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 and 2018 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$172,110
<u>Improvements</u>	<u>\$705,200</u>
Total	\$877,310

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

Land	\$146,170
<u>Improvements</u>	<u>\$768,000</u>
Total	\$914,170

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 year 2017 and 2018.
8. This Decision and Order is effective on January 4, 2021.

Signed and Sealed: January 4, 2021

Steven A. Keetle, Commissioner