

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wylie T. Osborne,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0434

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 2,546 square foot two story residence, with a legal description of: Falling Waters Lot 64 Block 0 Irreg., Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$324,700 for tax year 2017.
3. Wylie T. Osborne, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$284,075 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$308,200 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 September 10, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Wylie T. Osborne 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 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).

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 assessed value of the Subject Property is not equalized with the assessed values of other comparable properties.
17. The Taxpayer presented a spreadsheet of information regarding the Subject Property and three other properties that the Taxpayer considered comparable.
18. 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, etc.⁹

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 For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 22, 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.

19. The County Board presented the 2017 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, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented. The PRF for the Subject Property showed the factors that went in to the determination of the assessed value of the Subject Property prior to County Board action.
20. The Taxpayer presented information from the County Assessor's web site for the Subject Property and the three other properties on the spreadsheet.
21. A review of that information indicates that, after County Board action, the Subject Property has the highest assessed value per square foot amount the four properties presented. This same information indicates that the Subject Property is the newest and largest of the four and has amenities that the other three do not such as a fourth tandem garage stall and covered deck, while the other properties have features that the Subject Property doesn't, such as a fenced-in back yard and open slab patios and wood decks.
22. The Taxpayer's burden to show the valuation to be unreasonable is not met by showing a mere difference of opinion. Rather, the Taxpayer must establish the valuation placed upon the property when compared with valuations placed on other similar property is grossly excessive and is a result of arbitrary or unreasonable action and not just a mere error of judgment.¹⁰
23. Based on the information provided, the Commission cannot determine the different contributions to value of all of the different amenities or the basis of the assessments placed on the properties presented and therefore cannot find that the valuation of the Subject Property when compared with valuations placed on other similar properties is grossly excessive or is a result of arbitrary or unreasonable action.
24. 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.
25. 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:

¹⁰ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447, (2013).

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	\$ 51,800
<u>Improvements</u>	<u>\$256,400</u>
Total	\$308,200

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 December 15, 2020.

Signed and Sealed: December 15, 2020

Steven A. Keetle, Commissioner