

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Facilities Cost Management Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0506

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

Background

1. The Subject Property is an unimproved residential parcel, with a legal description of: Rockbrook Woods Lot 2 Block 0 Irreg. 1.166AC, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$160,100 for tax year 2017.
3. Facilities Cost Management Group, LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$93,005 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$160,100 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 the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Merle W. Rambo 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) 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 alleges that the increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary, and he further alleged that the increase in assessed value was greater than other properties in the neighborhood.
17. 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 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 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.
18. The Taxpayer’s requested value for the land component of the Subject Property was determined by averaging the assessed values of the land component of three properties in

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).

an adjoining subdivision, and then applying the averaged per square foot value to the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.¹¹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal method would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.

19. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments[.]"¹²
20. The County Board presented the 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, including the Subject Property, to support assessed values of the Subject Property and the other properties presented.
21. The County Appraiser indicated that after reviewing all of the information presented at the hearing, including the PRFs and the sales in the economic area of the Subject Property, his opinion would be that the valuation of the Subject Property should be \$100,000 to bring it more in line with other properties of a similar size in the area.
22. The Commission, based on all of the information presented at the hearing, finds and determines that the assessed value of the Subject Property is \$100,000.
23. 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.
24. The Taxpayer has 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 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

<u>Land</u>	<u>\$100,000</u>
Total	\$100,000

¹¹ See, Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹² The Appraisal of Real Estate, Appraisal Institute, at 308 (13th ed. 2008).

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