

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kelly L. Parr et al. Trust, Kelly L. Parr,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0217

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 2,260 square foot ranch style residence, with a legal description of: Elk Valley Lot 2 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$346,300 for tax year 2017.
3. Kelly L. Parr et al. Trust (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$303,600 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$346,300 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 March 15, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kelly L. Parr 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

1. The Taxpayer alleged that it was unreasonable that the values for some parcels in the area of the Subject Property decreased from the prior tax year’s assessment while the value of the Subject Property increased from the prior year’s assessment.
2. The Taxpayer presented charts of information regarding the assessed values of eight other ranch style properties with walk out basements on the same side of the street as the Subject Property. The information on the chart indicates that the Subject Property had the greatest percentage change in value from the prior assessment year.
3. 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

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).

4. The Taxpayer's charts indicate that after the changes from the prior assessment year, the assessed per square foot value of the Subject Property is below the median per square foot value of the properties presented.
5. The County Board presented the Property Record File (PRF) for the Subject Property as well as a table regarding all of 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 those areas, including the Subject Property.
6. The PRF for the Subject Property indicated that a land valuation study was conducted in Douglas County which resulted in a change in the assessments of the land component of many parcels of property for the 2017 tax year as well as a reappraisal for the improvements on the properties in the neighborhood of 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 provide the PRF for the properties on the charts. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as quality of construction, condition, improved basement square footage, swimming pools, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹³
10. The Taxpayer alleged that the actual value of the Subject Property based on three recent sales is \$335,793.33.
11. The Taxpayer provided a document prepared by a realtor that the Taxpayer alleges demonstrates an average adjusted price for the Subject Property. The document contains a spreadsheet that lists three sold properties and presents a list of characteristics and adjustments to these properties. The PRFs for these three analyzed properties were not presented with the document at the hearing before the Commission. The spreadsheet does not indicate, for example, the quality of construction or condition of the sold properties. Additionally, while the spreadsheet indicates significant differences in the size of the lots between the sold properties and the Subject Property, there is no adjustment made to account for these differences. Additionally, the assessed per square foot value of the

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 January 7, 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.*

Subject Property is below the median per square foot sale price of the sold properties presented.

12. 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.
13. 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:

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	\$ 56,600
<u>Improvements</u>	<u>\$289,700</u>
Total	\$346,300

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 March 27, 2020.

Signed and Sealed: March 27, 2020

Steven A. Keetle, Commissioner