

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cyrus Khorram,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 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 3,087 square foot two story residence, with a legal description of: Fire Ridge Estates Lot 53 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$392,700 for tax year 2017.
3. Cyrus Khorram (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$355,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$392,700 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 14, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Cyrus Khorram 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 value of the Subject Property was not equalized with other comparable properties, particularly the property next door, which the Taxpayer alleged was superior to the Subject Property yet assessed at \$371,300 for tax year 2017.
17. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
18. “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.”¹⁰
19. 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.

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

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

20. The Taxpayer did not provide the PRF for the property next door, but rather presented information from the County Assessor’s web site. 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 property next door to determine if it is comparable to the Subject Property or whether adjustments could make it comparable to the Subject Property.¹¹
21. The information provided from the County Assessor’s web site does, however, indicate that the property next door, while larger, has a lower condition rating and lacks the fireplaces and amount of brick/stone on the exterior as compared with the Subject Property, among other differences.
22. The Commission cannot find that the property next door to the Subject Property is a comparable property for purposes of equalization.
23. The Taxpayer presented information and discussed the amount of basement finish in the Subject Property that demonstrated that the amount of basement finish is 1,000 square feet rather than the 1,200 listed on the PRF. Removing the 200 square feet of basement finish would result in a reduction in value of \$6,265.¹²
24. Based on the information presented at the hearing the Commission finds and determines that the assessed value of the Subject Property for tax year 2017 is \$386,435: \$64,800 for the land and \$321,635 for the improvements.
25. 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.
26. 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:

Land	\$ 64,800
<u>Improvements</u>	<u>\$321,635</u>
Total	\$386,435

¹¹ 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.*

¹² 200 square feet of basement finish x \$38.20 per square foot = \$7,640. \$7,640 x 0.82 neighborhood adjustment = \$6,265 (rounded).

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