

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard K. Hunt et al Trust, Richard Hunt,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0277 & 17R 0278

Decision and Order Affirming the
Determinations of the Douglas
County Board of Equalization

Background

1. The Subject Property in Case No. 17R 0277 is a 2,672 square foot ranch style property, with a legal description of: Miracle Hills Lot 10 Block 4 Irreg., Omaha, Douglas County, Nebraska. (12233 Izard St.)
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0277 at \$307,100 for tax year 2017.
3. Richard K. Hunt et al Trust, Richard Hunt, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$239,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0277 was \$307,100 for tax year 2017.
5. The Subject Property in Case No. 17R 0278 is a 1,940 square foot ranch style property, with a legal description of: Miracle Hills Lot 5, Block 5 Irreg, Omaha, Douglas County, Nebraska. (12242 Izard St.)
6. The County Assessor assessed the Subject Property in Case No. 17R 0278 at \$231,400 for tax year 2017.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$177,620 for tax year 2017.
8. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0277 was \$231,400 for tax year 2017.
9. The Taxpayer appealed these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on September 24, 2018, at the Omaha State Office Building, 1313 Farnam Street, Omaha, Nebraska, before Commissioner Steven Keetle.
11. Richard Hunt and Walter Peffer were present at the hearing for the Taxpayer.
12. 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

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
14. The Commission's review of the determination of the County Board of Equalization is de novo.²
15. 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
16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
18. 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
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

20. At the single commissioner hearing the Taxpayer indicated that they were not protesting the portion of the assessed value attributed to the home structures but only the portion of the assessed value allocated to the land component of the Subject Properties.
21. The Taxpayer alleged that the increase in value from the prior year was excessive.

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).

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).

22. The Taxpayer stated that his requested values were based on the 2015 assessed value of the Subject Property (both land and improvements) and a 7% increase in value for each of the past two years.
23. The Property Record files for both of the Subject Properties indicate that their 2015 assessed values upon which the Taxpayer's calculations were based were determined in 2005 and remained unchanged for a decade.
24. The Nebraska Supreme Court has held that 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 The Commission finds the Taxpayer's requested values unpersuasive.
25. The Taxpayer alleged that the assessed value of the land component was unduly influenced by nearby lake front property sales.
26. The Taxpayer did not, however, present any information regarding sales of nearby lake front property to allow the Commission to analyze this allegation.
27. Information was presented regarding a single lake front property which indicated that the value of its .36 acre lot was \$93,300 as compared to the \$44,000 or \$43,600 lot values for the .29 and .28 acre Subject Properties.
28. The information presented to the Commission is therefore insufficient to support the Taxpayer's allegation that lake front property sales unduly influenced the value of the land component of the Subject Properties.
29. The Taxpayer alleged that the lot values for the Subject Properties were not equalized with other comparable properties on a per square foot basis.
30. The Taxpayer presented information regarding the assessed values of other properties in the Miracle Hills subdivision as follows:

	Lot Size	Land Value	Per Sq. Ft.
811 N 124 th	.82	\$111,200	\$3.11
922 N 122 nd	.35	\$49,400	\$3.17
12203 Nicholas St	.33	\$47,700	\$3.25
1205 N 123 rd Cir	.61	\$88,700	\$3.29
12233 Izard	.29	\$44,000	\$3.45
12242 Izard	.28	\$43,600	\$3.46
12404 Rose Ln	.36	\$93,300	\$5.86

31. "Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use."¹¹

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).

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 212 (13th ed. 2008).

32. The seven parcels listed above demonstrate that, as the size of the lot increases, the per square foot value (i.e., the unit price) decreases, as would generally be expected, but with two exceptions. The first exception, as discussed earlier, is the per square foot value of the lakefront lot on Rose Lane, which is the highest on a per square foot basis. The second exception is per square foot value of the lot on N 123rd Circle, a wedge shaped lot located on a circle, which has a higher per square foot value than the general pattern. Lake front lots and lots located on a circle are often considered more desirable than lots without lake front and lots located on through street.
33. The Taxpayer also alleged that there were two other properties located across the street from each other that had significantly different per square foot values, one at \$3.57 per square foot and one valued at \$1.91 per square foot. The Taxpayer did not provide any information on the size of these lots; however, the property with the lower per square foot valuation backs up to 120th street, which is a heavily trafficked major north south arterial road.
34. The information presented to the Commission does not support the Taxpayer's allegation that the lot values for the Subject Properties were not equalized with other comparable properties on a per square foot basis.
35. The Nebraska Supreme Court has held that a taxpayer who offered no evidence that the subject property was valued in excess of its actual value, and who only produced evidence aimed at discrediting valuation methods utilized by county assessor, failed to meet the burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary.¹²
36. 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.
37. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2017, are affirmed.
2. The taxable values of the Subject Properties for tax year 2017 are:

¹² *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

Case No. 17R 0277

Land	\$ 44,000
<u>Improvements</u>	<u>\$263,100</u>
Total	\$307,100

Case No. 17R 0278

Land	\$ 43,600
<u>Improvements</u>	<u>\$187,800</u>
Total	\$231,400

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 May 17, 2019.

Signed and Sealed: May 17, 2019

Steven A. Keetle, Commissioner