

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John D. Cameraon et al. Trust,
John D. Cameron, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0350

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 3,540 square foot one and one-half story residence, with a legal description of: Tegtmeiers Replat Block 0 Lot 17, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$430,700 for tax year 2017.
3. John D. Cameraon et al Trust (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$400,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$430,700 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 August 20, 2019, at the Omaha State Office Building, 1313 Farnam, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John D. Cameron 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

1. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior year’s assessment was too great.
2. 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. The Taxpayer alleged that the 230 square foot addition to the Subject Property was being assessed at a disproportionate rate.
4. 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, including the Subject Property, to support the

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).

differences in per square foot assessed values between the Subject Property and the other properties presented.

5. The PRF indicates that all above ground square footage of the Subject Property is being assessed at the same per square foot amount.
6. The Taxpayer alleged that the Subject Property was not being assessed uniformly and proportionally with other comparable properties.
7. The Taxpayer did not provide the PRF for the properties presented at the hearing but rather provided information from the County Assessor's web site regarding the assessments of six other properties. 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 rating, condition rating, size, age, improved basement square footage, garages, decks, swimming pools, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹¹
8. The information that was presented indicates that differences in assessed values can be attributed to differences in the characteristics and features of the properties presented.
9. The values of the land components of the properties presented are different based on the size of the parcel with the larger parcels having a higher assessed value and the smaller parcels having a lower assessed value.
10. The Taxpayer discussed two properties on the same street as the Subject Property that had lower assessed values than the Subject Property.
11. The property directly next door to the Subject Property has a lower quality rating and is older than the Subject Property, but it is a smaller ranch style property with a larger basement that has more and higher quality finish, resulting in a higher per square foot value for its improvements. The property three houses up is older and has a lower quality rating and a much lower condition rating, resulting in a lower per square foot value for its improvements.
12. The Taxpayer alleged that the value of the Subject Property is negatively impacted by the presence of a condemned former rental house across the street from the Subject Property.
13. The Taxpayer did not present information to allow the Commission to quantify the impact of the condition of the property across the street on the value of the Subject Property
14. 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.

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 2, 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.*

15. 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	\$ 95,000
<u>Improvements</u>	<u>\$335,700</u>
Total	\$430,700

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 July 24, 2020.

Signed and Sealed: July 24, 2020

Steven A. Keetle, Commissioner