

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert M. Zuber,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0356

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 2,382 square foot ranch style residence, with a legal description of: Regency 3rd Add Lot 194 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$400,500 for tax year 2017.
3. Robert M. Zuber, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$326,167 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$400,500 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, Room E (301), Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robert M. Zuber 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 Subject Property was not assessed uniformly with other comparable properties resulting in an excessive valuation.
17. The Taxpayer also alleged that a recent sale of a nearby property indicated that the Subject Property was assessed at greater than market value.
18. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
19. “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

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 Property Record File (PRF) for the properties on the charts presented at the hearing but rather provided information from the County Assessor's web site regarding the 2019 assessments of four other properties.¹¹
21. The information from the County Assessor's web site shows that as of 2019, the other properties presented as equalization comparables have different amenities, such as fewer bathrooms and less improved basement square footage, which would cause their per square foot assessed values to be less than the Subject Property.
22. The information from the County Assessor's web site shows that as of 2019, the sold property has a lower condition rating and has different amenities, such as fewer bathrooms and no improved basement square footage, which would cause its per square foot assessed values to be less than the Subject Property.
23. The County Board presented the 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 differences in per square foot assessed values between the Subject Property and the other properties presented.
24. The information presented demonstrates that the Subject Property has the highest value per square foot of above ground living area; however, as it has the largest finished basement, largest garage, more bathrooms, and a separate outside basement entrance that the other properties do not have, its higher per square foot value does not appear to be unreasonable or arbitrary.
25. 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 presented by the Taxpayer as comparable properties such as size, quality, bathrooms, improved basement square footage, garages, decks, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹²
26. The Taxpayer argues that the value of the Subject Property should be reduced because the County Board reduced the value in the subsequent tax year. The information presented shows that the value of the Subject Property was reduced for the subsequent tax year while the other properties presented remained the same. The basis for this reduction in assessed value for the Subject Property was not presented to the Commission.

¹¹ The Commission is unable to determine if there were any changes to characteristics of any of the other properties from the 2017 assessment to the 2019 assessment based on the information presented.

¹² 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.*

27. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹³ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁴ For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
28. 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.
29. 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	\$106,000
<u>Improvements</u>	<u>\$294,500</u>
Total	\$400,500

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

¹³ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁴ 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).