

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bryan M. Snyder,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0407

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

Background

1. The Subject Property is a 2,503 square foot ranch style parcel, with a legal description of: Serenity Lot 2, Block 0 Irreg 18549 sqft, Omaha, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$543,300 for tax year 2017.
3. Bryan M. Snyder (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 \$543,300 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 September 24, 2018, at the Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Bryan M. Snyder 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 purchased the Subject Property in April of 2016 for \$572,500. The Taxpayer alleged that they overpaid for the Subject Property because they needed to quickly acquire a handicapped accessible home.
17. The Taxpayer alleged that the Subject Property was assessed at a higher per square foot value than other comparable properties.
18. The County Appraiser indicted that the Subject Property was one of many sales that the County utilized to determine assessed values for residential properties in Douglas County and the value of any single property is not based on its sale price alone.
19. The County Appraiser presented a listing of all sales of residential properties in the same economic area as the Subject Property.
20. The County Appraiser presented the Property Record File (PRF) for the Subject Property which indicated the quality and condition ratings of the Subject Property as well as the contributory value for the characteristics of the Subject Property such as above ground

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).

living area, basement size and finish, fireplaces, etc., as produced by the county's assessment model.

21. The Taxpayer presented a listing of sales of ranch style properties of similar square footage to the Subject Property. The Taxpayer did not present the PRF for any of these properties to allow the commission to determine if they were comparable to the Subject Property for purposes of assessment (i.e. quality, condition, basement finish, etc).⁹ Additionally, the listing of sales of ranch style properties presented did not contain the date each property was sold, the school district in which the sold property was located, or information regarding the properties surrounding the sold properties.
22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰ Quality and Condition rating are also important characteristics, as a higher quality of construction increases the per square foot value of a property.
23. "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."¹¹ Without information about the characteristics of the sold properties presented, the Commission cannot determine the proper adjustments necessary to make the sale properties like the Subject Property.
24. Without the PRF or other information regarding the characteristics of the sold properties, the Commission is unable to determine if the Subject Property is being assessed at a higher per square foot amount than other comparable properties.
25. The Taxpayer alleged that the value of the Subject Property is negatively impacted by the proximity of the home on the neighboring property to the Subject Property.
26. Sometime in the year the Taxpayer purchased the Subject Property, but prior to the assessment date for the 2017 tax year, the home on the adjacent property was completed. This home impedes the view of a nearby pond from the Subject Property and the driveway to this neighboring property runs right next to the home on the Subject Property out onto Bel Air Drive, rather than running to the street closer to the home on the neighboring property.
27. The Taxpayer further indicated that the home on the neighboring property is so close to the Subject Property that it looks directly into the Subject Property and that guests often think that they are part of the same property.
28. The documents and statements presented at the hearing did not contain information to allow the Commission to quantify the impact of the proximity of the home on the neighboring property to the value of the Subject Property.

⁹ The Order for Single Commissioner Hearing and Notice issued in this matter on June 29, 2018, specifically includes the following instruction: *NOTE: Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed.*

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

29. The Taxpayer alleged that the value of the Subject Property is negatively impacted due to off-hours loitering and other activity at the church property across the street and the Subject Property's location next to a desirable school district without being in that school district.
30. As with the proximity of the home on the neighboring property, the documents and statements presented at the hearing did not contain information to allow the Commission to quantify the impact of the proximity of the church across the street or the impact of the school district to the value of the Subject Property.
31. 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.
32. 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	\$ 72,700
<u>Improvements</u>	<u>\$470,600</u>
Total	\$543,300

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 May 17, 2019.

Signed and Sealed: May 17, 2019

Steven A. Keetle, Commissioner