

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Erin Lindsay Hall,
Appellant,

Case No: 17R 0042

v.

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

Sarpy County Board of Equalization,
Appellee.

Background

1. The Subject Property is a 1,866 square foot ranch style single-family residential parcel, with a legal description of: Lot 100 Remington Ridge, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$333,167 for tax year 2017.
3. Erin Lindsay Hall (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$295,200 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$333,167 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 October 29, 2018, at the Omaha State Office Building, 1313 Farnam St., Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
8. Larry Houlton and Jackie Morehead from the Sarpy County Assessor's Office were 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 August of 2016.
17. The Taxpayer alleged that Subject Property should have a market value of \$307,500 based on the August 2016 purchase price.
18. The Courts have held that “the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”⁹ “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁰

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

⁹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁰ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

19. The County Board presented information regarding sales used to determine the assessed values for residential properties in the area of the Subject Property. The County utilized a market adjusted cost approach which used Marshall and Swift costing data that was then adjusted using recent sales, including the sale of the Subject Property, to determine the market values for properties based on their characteristics. The County assessor had 25 sales of ranch style properties alone in the two-year period ending in September of 2016, in a market area with 259 parcels.
20. The Taxpayer further alleged that the Subject Property was not assessed uniformly and proportionally with other comparable homes in the same subdivision.
21. The Taxpayer presented information regarding three properties with nearly the same floorplans as the Subject Property that were assessed at a lower value for tax year 2017.
22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
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.”¹²
24. The information presented regarding the three comparable properties indicate that the differences in the assessments are attributable to differences in the properties. The Subject Property, for example, is the only property with two fireplaces, has the second largest garage, is the only one with basement finish, and is the only one with a basement bar/cabinetry; these amenities account for the greater assessment for the Subject Property as compared to other similar properties.
25. The Taxpayer alleged that the builder of the Subject Property used slightly lower quality materials than some other builders in the neighborhood.
26. The Taxpayer did not present any other evidence that the quality or condition rating of the Subject Property, which would reflect the quality of construction and materials, was incorrect as determined by the County Assessor
27. The County Board’s witnesses indicated that the Subject Property’s neighborhood was a newer neighborhood and that the County Assessor’s office reviewed building permits and inspected properties in the area as they were being constructed. The witnesses also indicated that the Subject Property was a model home constructed by the builder.
28. The Taxpayer alleged that the Subject Property was negatively impacted by its location with the road that is the main entrance into the subdivision running along the side of the property and a church across directly across that road to the north of the Subject Property.
29. The documents and statements presented at the hearing did not contain information to allow the Commission to quantify the impact of the main entrance into the subdivision

¹¹ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, Appraising Residential Properties, at 334 (4th ed. 2007).

running along the side of the property and the church across directly across that road to the value of the Subject Property.

30. 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.
31. 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	\$ 52,000
<u>Improvements</u>	<u>\$281,167</u>
Total	\$333,167

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
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 24, 2019.

Signed and Sealed: May 24, 2019

Steven A. Keetle, Commissioner