

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Denise C. Silverman et al. Trust, Denise C.
Silverman,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0491 & 17R 0492

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

Background

1. The Subject Property in Case No. 17R 0491 is a residential parcel with a legal description of: Regency 1st Add Lot 85 Block 0 –Ex Irreg NE Cor- Irreg N PT, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0491 at \$78,400 for tax year 2017.
3. Denise C. Silverman et al Trust, Denise C. Silverman (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0491 was \$59,900 for tax year 2017.
5. The Subject Property in Case No. 17R 0492 is a residential parcel improved with a 2,582 square foot raised ranch style residence, with a legal description of: Regency 1st Add, Lot 85 Block 0-Ex Irred 14.1 ft-Irreg S PT, Omaha, Douglas County, Nebraska.
6. The County Assessor assessed the Subject Property in Case No. 17R 0492 at \$376,600 for tax year 2017.
7. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2017.
8. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0492 was \$369,000 for tax year 2017.
9. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on February 15, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
11. David Wilson, Walentine O'Toole, LLP, was 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. The Taxpayer did not allege that the value of the improvements on the Subject Properties as determined by the County Board was arbitrary, unreasonable or incorrect, but only argued that the assessed value of the land component of the Subject Property was not equalized with other comparable properties.

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).

21. The Taxpayer alleges that the Subject Properties in both of the present appeals should be assessed as if they were a single lot with a single house situated on it. The land component or lot of the Subject Properties is divided into two parcels, each parcel being located in a different school district or taxing district. The parcels are 0.18 and 0.29 acres in size which, when combined, would make a single 0.47 acre lot.
22. The Taxpayer argues that the land components of the Subject Properties should be assessed at the average per square foot assessed values of sixteen comparable properties located in the area of the Subject Properties.
23. The Taxpayer presented information from the County Assessor's web site regarding each of the sixteen parcels that the Taxpayer alleged were comparable to the Subject Properties. This information demonstrated that the lots of the comparable properties varied in size, and as the size of the lots increased the per square foot assessed values decreased. This is consistent with professionally accepted appraisal principles which hold that, generally, as the size of a parcel increases the unit prices decrease.⁹
24. Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments,"¹⁰
25. The Taxpayer argued that, in the alternative, the Subject Property should be valued at the same price per square foot as the two most comparable lots.
26. The information presented shows that two lots of 0.45 acres in size, which are just slightly smaller than the combined size of the Subject Properties of 0.47 acres, were each valued at \$5.53 per square foot.
27. The County Board presented the Property Record File (PRF) for each of the Subject Properties, which set forth the basis of the assessed value of each Subject Property.
28. The County Appraiser indicated that after reviewing the information presented at the hearing regarding the Subject Properties, his opinion of value for the land component of the Subject Properties as of the assessment date would be \$45,500 for the land component of the Subject Property in Case No. 17R 0491 and \$70,200 for the land component of the Subject Property in Case No. 17R 0492. The County Appraiser's revised opinion of value for the land components of the Subject Properties would result in a combined assessed value of \$115,700 for the combined lot size of 0.47 acres or \$5.50 per square foot.
29. The Commission finds and determines that the value of the land components of the Subject Properties for tax year 2017 are \$45,500 for the land component of the Subject Property in Case No. 17R 0491 and \$70,200 for the land component of the Subject Property in Case No. 17R 0492.

⁹ See, Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

¹⁰ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

30. The Taxpayer has 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 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 vacated.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties in the above captioned appeals for tax year 2017, are vacated and reversed.
2. The taxable value of the Subject Property in Case No. 17R 0491 for tax year 2017 is:

<u>Land</u>	<u>\$ 45,500</u>
Total	\$ 45,500

3. The taxable value of the Subject Property in Case No. 17R 0492 for tax year 2017 is:

Land	\$ 70,200
<u>Improvements</u>	<u>\$288,700</u>
Total	\$358,900

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2017.
8. This Decision and Order is effective on March 4, 2020.

Signed and Sealed: March 4, 2020

Steven A. Keetle, Commissioner