

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Steven W. Gallaher et al.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0504

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

Background

1. The Subject Property is a 2,893 square foot ranch style rural residential property, with a legal description of: Florence Acres, Lot 8 Block 0, 8.35 AC, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$514,670 for tax year 2017.
3. Steven W. Gallaher (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$389,751 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$514,670 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 January 22, 2019, at the Omaha State Office Building, 1313 Farnam, Room E (301E), Omaha, Nebraska, before Commissioner Steven Keetle.
7. Steven W. Gallaher 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

---

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the Subject Property was assessed at a greater amount than other comparable properties in the neighborhood.
17. The Subject Property is improved with a 2,893 square foot ranch style residence and a pole barn on an 8.35 acre parcel that is classified as agricultural and horticultural land, meaning that the parcel is primarily used for the commercial production of agricultural or horticultural products.<sup>9</sup> The residence on the Subject Property has a quality rating of Very Good and a condition rating of Good.
18. The Taxpayer presented information regarding several properties located near the Subject Property that the Taxpayer alleges are comparable to the Subject Property.
19. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
20. “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

---

<sup>3</sup> Brenner at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>9</sup> See, Neb Rev. Stat §77-1359 (Reissue 2018)

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

comparable is made more like the subject, its price is brought closer to the subject's unknown value."<sup>11</sup>

21. The Taxpayer did not present the Property Record Files (PRF) for the parcels that he alleged were comparable to the Subject Property but rather presented printouts from the County Assessor's web site. Without the details contained in the PRF the Commission is unable to determine the contributions to value of the various amenities or features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>12</sup>
22. The information from the County Assessor web site does show that the Subject Property has the highest per square foot value compared to the other properties presented. This same information shows that the Subject Property also has the highest quality rating of all of the properties presented. A property with a higher quality rating would generally be expected to have higher per square foot values than a property with a lower quality rating.<sup>13</sup>
23. The property that the Taxpayer alleges is most comparable to the Subject Property has a quality rating of Good and a condition rating of Average, each a full rating level below the Subject Property's quality rating of Very Good and condition rating of Good.
24. From the information presented, the Commission determines that the properties offered by the Taxpayer are not comparable to the Subject Property.
25. The Taxpayer alleged that the increase in the assessed value from the prior year was in excess of the increase in market values. The Taxpayer alleged that the increase in the assessed value of the improvement located on the Subject Property was 27% and that a 4.9% increase would be more appropriate.
26. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>14</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>15</sup>
27. An explanation for the sudden increase in assessed valuation may be found in the valuation history of the Subject Property, which indicates no change to the assessed value of the improvements from 2007 through 2016. Viewed as the result of a decade of appreciation, a 27% increase equals less than 3% on average per year. The valuation history for each of the other properties presented indicates that some of their

---

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

<sup>12</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 9, 2018, 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.*

<sup>13</sup> See, Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at 6 (12/2010).

<sup>14</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>15</sup> 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).

improvement values did not change for several years as well, but these records only go back as far as the 2012 assessment.

28. The County Board offered a listing of sales of residential properties in the same economic area as the Subject Property for the two years prior to September 30, 2016, to support the assessed value of the Subject Property.
29. The Taxpayer alleged that the Subject Property was assessed in excess of the comparable properties selected by the County Assessor's office.
30. The Taxpayer offered a pair of sales produced in a "subdivision sales report" from the County Assessor's web site which states that the only criteria used to produce sales are: Sold within the past three years, improved square footage +/- 25%, and built in the same style. While the two properties produced do meet these criteria they are substantially different than the Subject Property in age, quality, and condition and thus are not comparable to 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                | \$ 47,970        |
| <u>Improvements</u> | <u>\$466,700</u> |
| Total               | \$514,670        |

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 November 6, 2019.

Signed and Sealed: November 6, 2019

---

Steven A. Keetle, Commissioner