

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas J. Sokoll,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0570

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

Background

1. The Subject Property is a residential parcel improved with a 1,529 square foot one story residential townhouse, with a legal description of: Stone Creek Lot 546 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$177,200 for tax year 2017.
3. Thomas J. Sokoll (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$171,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$177,200 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 July 24, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Thomas J. and Cynthia A. Sokoll were 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 it was unreasonable that the value of the Subject Property increased from the prior year while the value of the properties to either side of the Subject Property had valuation decreases.
17. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
18. The Taxpayer presented the Property Record Files (PRFs) for the Subject Property and three other comparable properties located on either side of the Subject Property on the same cul-de-sac. All four properties are ranch style townhomes built in 2006 by the same builder; they have the same quality and condition rating and unfinished basements. The properties are located on similar lots of slightly different sizes. Two of the properties have 1,559 square feet of above ground living space, one has 1,537 square feet of above

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

¹⁰ 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).

ground living space, and the Subject Property has 1,529 square feet of above ground living space. The Subject Property and one other have a covered porch or deck; one property has an open slab porch. The Subject Property has a larger garage than the other three properties and more brick veneer than any of the other properties and those differences are reflected in the calculations of value shown on its PRF.

19. The PRFs for the four properties show that the differences in their assessed values are attributable to differences in their characteristics, such as square footage of above ground living space, garage square footage, porches, and decks, etc.
20. The Taxpayer additionally alleges that the Subject Property is not assessed uniformly because the property to the north of the Subject Property was only assessed for a portion of its above ground square footage while the Subject Property was assessed for all of its above ground square footage.
21. The PRF for the property to the north of the Subject Property contains a photograph and sketch that shows 1,536.9 square feet of above ground living area; however, on the non-commercial cost detail sheet the square footage is shown as 1,515 square feet, 98.5% of the actual size of the property.
22. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹²
23. Calculating the value of the improvements on the Subject Property using 98.5% of its above ground living space would result in an improvement value of \$127,400,¹³ which, when added to the \$48,500 land component, would result in a total equalized value of \$175,900 for tax year 2017.
24. The Commission, based on all of the information before it in the present hearing, finds and determines that the equalized value of the Subject Property for tax year 2017 is \$175,900.
25. 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.

¹¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹² *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

¹³ Based on the values in the PRF presented by the Taxpayer at the hearing:

1,529 square feet of above ground living space for the Subject Property x 98.5% = 1,506 square feet.

1,506 square feet x \$82.44 psf = \$124,155 base value

1,506 square feet x \$2.22 psf = \$3,343 HVAC adjust

\$124,155 base value + \$3,343 HVAC adjust + \$62,014 add on value from PRF (basement, garage, fireplace, porch, etc) = \$189,512 Replacement Cost New.

\$189,512 Replacement Cost New x 10.4% * depreciation = \$19,709 depreciation

\$189,512 - \$19,708 = \$169,803

\$169,803 x .7504 NBHD Adjustment = \$127,420 Replacement Cost New Less Depreciation.

Rounded to \$127,400 Improvement Value

* The depreciation amount listed on the PRF for all of the properties is 10%; however, the calculation to get the amount of depreciation listed on each of the four PRFs requires the use of 10.4% depreciation on the Base Value + HVAC Adjustment + Total Add-on Value. Therefore the Commission utilized 10.4% in its calculation.

26. The Taxpayer has 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 48,500
<u>Improvements</u>	<u>\$127,400</u>
Total	\$175,900

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 June 12, 2020.

Signed and Sealed: June 12, 2020

Steven A. Keetle, Commissioner