

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paul T. Bellinger,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0577 & 18R 0378

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

Background

1. The Subject Property is a residential parcel improved with a 1,596 square foot ranch style residence, with a legal description of: Bridgefords Rockbrook Add Lot 7 Block 1 S 116 Ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$194,400 for tax year 2017.
3. Paul T. Bellinger, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$0 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$180,000 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$189,900 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$152,700 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$180,000 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on February 13, 2019, at the Omaha State Office Building 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Paul T. Bellinger was present at the hearing.
11. Jimmie L. Pinkham, III, Deputy Douglas County Attorney, was present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

¹ See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

13. The Commission’s review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the value of the Subject Property was reduced by reason of court orders issued regarding the tax status of the Subject Property.
20. The Taxpayer did not provide a copy of any court order discussing the value or tax status of the Subject Property. The Taxpayer offered a court order awarding the Subject Property to the Taxpayer.
21. The Taxpayer alleged that the value of the Subject Property was negatively impacted by external factors including a gas leak in the right of way, disrepair of city fence in front of the Subject Property, heavy traffic forced to pass down Center Street in front of the home

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).

due to accidents at the nearby pedestrian bridge, road disrepair, and lack of sufficient policing of ordinances.

22. The Taxpayer did not offer information to establish the nature of the above described external factors or to allow the Commission to quantify their impact on the value of the Subject Property.
23. The Taxpayer alleged that the value of the Subject Property should be reduced to weather related loss from erosion and/or lightning strike.
24. The Taxpayer did not offer information regarding erosion or lightning strike damage to the Subject Property to allow the Commission to quantify their impact on the value of the Subject Property.
25. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of other comparable properties.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
27. The Taxpayer did not present the Property Record Files (PRF) or other information regarding the assessed value of the parcels that he used to determine the average per acre assessed value.
28. The County Board presented the PRF for the Subject Property for tax years 2017 and 2018, which contains information about the characteristics of the Subject Property and the value the county attributed to those characteristics.
29. The Taxpayer made other requests for relief that were unrelated to the valuation of the Subject Property and outside the jurisdiction of the Commission.
30. “Jurisdiction is the inherent power or authority to decide a case.”¹⁰ The Commission only has that “authority” which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹¹
31. Any request for relief that is outside the jurisdiction of the Commission must be denied.
32. 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.
33. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board is arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹¹ See, e.g., *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is:

Land	\$ 20,000
<u>Improvements</u>	<u>\$160,000</u>
Total	\$180,000

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 February 28, 2020.

Signed and Sealed: February 28, 2020

Steven A. Keetle, Commissioner