

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Colin Herr,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 17R 0057

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

Case No. 18R 0369

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

Background

1. The Subject Property is a residential parcel improved with a 2,677 square foot two story residence, with a legal description of: Armbrust Acres 2nd Lot 273, Block 0 80x125, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$298,200 for tax year 2017.
3. Colin Herr (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$246,400 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$298,200 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$294,000 for tax year 2018.
6. Colin Herr, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$260,900 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$294,000 for tax year 2018.
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 January 24, 2019, at the Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Colin Herr was present at the hearing.
11. 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

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
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 alleges that the assessed value of the Subject Property is not equalized with the assessed values of 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).

20. The Taxpayer alleged that the assessment/sale ratio⁹ of the Subject Property was higher than other comparable properties and that therefore the assessed value of the Subject Property should be reduced.
21. The Taxpayer presented an analysis of several properties that had a lower assessment/sale ratio than the Subject Property as well as several properties that sold for more than the Subject Property and had lower assessment/sale ratios. To support this analysis, the Taxpayer presented three Property Record Files (PRFs) for the 2017 assessments of three of these properties, as well as information from the County Assessor's web site regarding the 2017 assessments of four additional properties. The Taxpayer also provided information from the County Assessor's web site regarding the 2019 assessments of these same seven properties, as well five additional properties that all had higher sales prices than the Subject Property.
22. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by [the Nebraska] Constitution."¹⁰
23. Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results must 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
24. The information presented to the Commission indicates that the County Assessor's office utilized all of the valid sales in the market area of the Subject Property and applied a multiple regression analysis to these sales to determine a value for different characteristics of residential properties, i.e., value per bathroom, per square foot of above ground living space based on size, quality, and condition, etc. These values per characteristic were then applied to all residential properties in Douglas County based on the specific characteristics of each individual property. The County Assessor's office utilized a different set of sales and a different multiple regression analysis to determine the assessed values for tax year 2018 than was used in 2017.
25. When looking at the equalization of residential values the Nebraska courts have held that "[t]o set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."¹³
26. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴

⁹ See 442 Neb. Admin. Code Ch. 9 § 002.02 (06/2011).

¹⁰ *Neb. Const.*, Art. VIII, §1.

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 *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

27. “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.”¹⁵
28. The 2017 PRFs and other information provided by the Taxpayer for the Subject Property and the other properties indicate that differences between their assessed values are attributable to differences in the characteristics of the properties. When compared to the property located at 16317 Westfield, for example, the Subject Property has a higher condition rating, more above ground living space, a finished basement, a larger garage, a larger sunroom, and an additional bathroom.
29. Looking at the per square foot assessed values for the 2017 assessments, the per square foot value of the Subject Property of \$111.39 is among the highest per square foot values of the properties presented, which range from \$84.86 to \$133.40, but the differences in per square foot values are related to differences in the characteristics of these properties.¹⁶
30. For the 2018 tax year the only PRF provided was for the Subject Property; the PRF shows that the County Assessor developed and applied an entirely new model to determine assessed values. The information provided regarding the assessments of the other properties by the Taxpayer shows that the per square foot value of the Subject Property was reduced to \$109.82 for the 2018 assessment, while the per square foot values of all but one of the other properties presented increased, making the range of values \$83.88 to \$141.01.
31. Based upon the information presented to the Commission, the Taxpayer has failed to demonstrate that the assessed value of the Subject Property for tax year 2017 or 2018 was not equalized with the assessed values of other comparable properties, or that a non-uniform method was utilized to determine the assessed value of the Subject Property. Accordingly, the Commission is not persuaded that the Taxpayer is entitled to relief on the basis of equalization.
32. During the hearing, the Taxpayer also discussed the characteristics of the Subject Property and provided multiple pictures of the interior and exterior of the Subject Property, as well as other properties in the same subdivision.
33. “The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹⁷
34. For tax year 2017 the Subject Property received a quality rating of Good+ and a condition rating of Good. Based upon all of the information presented, the Commission finds that the Subject Property should have a quality rating of Good rather than Good+ for the purpose of determining its assessed value.

¹⁵ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁶ The Commission notes that when the assessed value is changed based on the valuation as is done later in this order the per square foot value for the Subject Property in tax year 2017 is \$103.99 psf.

¹⁷ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

35. Utilizing the information presented regarding the per unit values assigned by the County Assessor's assessment model for each of the characteristics of a residential property with a quality rating of Good (rather than Good+) for tax year 2017, the Commission determines that the assessed value of the Subject Property for tax year 2017 is \$278,390.¹⁸
36. For tax year 2018, the PRF for the Subject Property indicates that the quality rating of the Subject Property was changed by the County Assessor's office and it received a quality rating of Good rather than a quality rating of Good+.
37. For tax year 2017, 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.
38. For tax year 2017, 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.
39. For tax year 2018, 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.
40. For tax year 2018, 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.

¹⁸ Rounded. See the calculation Below:

Market Calculation Detail			
	Units	Value/Per	Value
Cond Gd	1	11,500	\$ 11,500.00
Fire Masonry	2	4,025	\$ 8,050.00
Baths	3.5	3,450	\$ 12,075.00
SF	2677	51.75	\$ 138,534.75
Sun Room	182	37.5	\$ 6,825.00
Base Fin	965	23	\$ 22,195.00
Garage Built in	528	23	\$ 12,144.00
Base 8'Blk	1461	11.5	\$ 16,801.50
Porch Wood Deck	396	11.5	\$ 4,554.00
Central H&A	2677	3.45	\$ 9,235.65
2 Story	1	-1,150	\$ (1,150.00)
Market Age			\$ (17,000.00)
Constant			\$ 20,000.00
Total			\$ 243,764.90
Nbhd Adj			0.9718
Adjusted Total			\$ 236,890.73
Land			\$ 41,502.00
		Total Market Value	\$ 278,392.73
		TMV Rounded	\$ 278,390.00

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	\$ 41,500
<u>Improvements</u>	<u>\$236,890</u>
Total	\$278,390

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.
4. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 41,500
<u>Improvements</u>	<u>\$252,500</u>
Total	\$294,000

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2017 and 2018.
9. This Decision and Order is effective on October 4, 2019.

Signed and Sealed: October 4, 2019

Steven A. Keetle, Commissioner