

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Girard S. Ferguson et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0588

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 1,756 square foot ranch style residence, with a legal description of: Centennial Lot 44 Block 0 65 X 125, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$246,400 for tax year 2017.
3. Girard S. Ferguson (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$209,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$246,400 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. Girard S. and Linda Ferguson 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
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

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).

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 the Subject Property was not assessed uniformly or proportionally with other comparable properties.
17. “To 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.”⁹
18. The Taxpayer presented and discussed a chart with information about the total assessed value of the Subject Property and four other properties located near the Subject Property.
19. The Taxpayer alleged that the assessed value of the Subject Property should be set at the average per square foot value of the four properties he presented, or in the alternative at the same per square foot value as the property directly behind the Subject Property.
20. The Taxpayer’s first requested value was determined by averaging the assessed values of other properties, and then applying the averaged per square foot value to the area of the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.¹⁰ Because the method used by the Taxpayer is not identified in statute, proof of its

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

¹⁰ See, Neb. Rev. Stat. § 77-112 (Reissue 2018).

professional acceptance as a method of mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.

21. "Simply 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."¹¹
22. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
23. "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."¹³
24. The Taxpayer did not provide the Property Record File (PRF) for the properties on the charts but rather provided information from the County Assessor's web site regarding the 2019 assessments of the four other properties discussed.¹⁴ Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as style of construction, condition, improved basement square footage, swimming pools, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹⁵
25. The information from the County Assessor's web site demonstrates that the differences in assessed values can be attributed to differences in the characteristic of the properties.
26. The property directly behind the Subject Property is a two story residence while the Subject Property is a ranch style property. In addition to the differences in per square foot construction costs generally, the property behind the Subject Property has a smaller basement with much less finished square footage and a smaller garage. This property is not comparable to the Subject Property and should not be utilized when determining the assessed value of the Subject Property.
27. The remaining properties are ranch style properties of similar square footage to the Subject Property, but they have unfinished or minimal basement finish, and two of them

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008).

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ The Commission notes that the quality rating of the Subject Property was different on the 2017 PRF versus the 2019 County Assessor information. The Commission is unable to determine if there were any changes to characteristics of any of the other properties from the 2017 assessment to the 2019 assessment based on the information presented.

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 7, 2019, 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.*

have smaller garages which account for the difference in per square foot values between the properties.

28. The County Board presented the 2017 PRF for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.
29. The Taxpayer has not demonstrated that the valuations of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction in assessed values under the court's determination in *Scribante*.¹⁶
30. The Taxpayer alleged that the property directly behind the Subject Property sold for less than its assessed value after the assessment date, which indicated that assessed values were above market value.
31. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."¹⁷ "Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade."¹⁸ Furthermore, as explained above, the property directly behind the Subject Property is not comparable to the Subject Property.
32. Two of the ranch style properties presented by the Taxpayer sold closer to the assessment date for amounts higher than their assessed values; this, taken together with the sales information presented by the County Board, supports the County Board's determination of value.
33. 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.
34. 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.

¹⁶ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁷ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁸ *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

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	\$ 43,500
<u>Improvements</u>	<u>\$202,900</u>
Total	\$246,400

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