

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wolford S. Baker,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0600

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

Background

1. The Subject Property is an unimproved residential parcel, with a legal description of: West Dodge Lot 2 Block 23 –Ex Irreg Estrly 132 Ft- S 119 Ft Lt 1 & S 119 & W 55 N 186 Ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$29,500 for tax year 2017.
3. Wolford S. Baker (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$3,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$29,500 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 September 13, 2019, at the Omaha State Office Building 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steve Keetle.
7. Wolford S. Baker 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 1.¹
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 the Subject Property is not assessed uniformly and proportionally with other comparable properties.
17. The Subject Property is an unimproved 1.29 acre “L” shaped residential parcel adjoining the Little Papillion Creek on the east and other residential lots to the south and east. On the north side the Subject Property adjoins the unpaved Hamilton Street via a drive way that runs between two other residential lots back to the larger portion of the parcel. The Taxpayer owns the lot located directly north of the Subject Property but they are two separate parcels.
18. The Taxpayer indicated that the drive way portion of the Subject Property was not wide enough to build upon but the back portion of the lot was of sufficient size to be improved. The Taxpayer indicated that the cost of running the connections to the utilities located under Hamilton Street was cost prohibitive to development of the lot.
19. The Taxpayer presented an unimproved 1.34 acre parcel (the Seward Street Parcel) located in the same subdivision but one block north of the Subject Property on Seward

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).

Street that was adjoining the Little Papillion Creek on the east and other residential lots to the south and east. The north edge of the Seward Street parcel runs along the paved Seward Street.

20. Both the Subject Property and the Seward Street Property are unimproved residential parcels that are wooded and adjoin a creek to the east and residential parcels to the south and east.
21. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
22. The Commission finds based on all of the information presented to it that the Subject Property and the Seward Street Property are comparable properties.
23. The Subject Property is assessed at \$29,500 while the Seward Street Property is assessed at \$14,900. The Commission finds that the Subject Property is not assessed uniformly or proportionally with the Seward Street Parcel.
24. The assessed value of the Subject Property should be equalized with the Seward Street property for tax year 2017.
25. The Commission finds and determines that the assessed value of the Subject Property for tax year 2017 is \$14,900.
26. 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.
27. 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:

<u>Land</u>	<u>\$14,900</u>
Total	\$14,900

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.

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

6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective on February 7, 2020.

Signed and Sealed: February 7, 2020

Steven A. Keetle, Commissioner