

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Curtis D. Morrow,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0230

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

Case Nos: 17R 0231, 18R 0234 & 18R 0235

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

Background

1. The Subject Property in Case Nos. 17R 0230 & 18R 0234 is a residential parcel improved with a 1,230 square foot one and one-half story residence with a legal description of: Linwood Park Rep 3* Lot 1 Block 0, Omaha, Douglas County, Nebraska (The Improved Parcel).
2. The Subject Property in Case Nos. 17R 0231 & 18R 0235 is an unimproved residential parcel with a legal description of Linwood Park Rep 3* Lot 2 Block 0, Omaha, Douglas County, Nebraska (the Unimproved Parcel).
3. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0230 at \$78,800 for tax year 2017.
4. Curtis D. Morrow (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$400 for tax year 2017.
5. The County Board determined that the taxable value of the Subject Property was \$78,800 for tax year 2017.
6. The County Assessor assessed the Subject Property in Case No. 18R 0234 at \$62,500 for tax year 2018.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$45,002 for tax year 2018.
8. The County Board determined that the taxable value of the Subject Property was \$53,400 for tax year 2018.
9. The County Assessor assessed the Subject Property in Case No. 17R 0231 at \$11,300 for tax year 2017.
10. The Taxpayer protested this value to the County Board and requested an assessed value of \$400 for tax year 2017.
11. The County Board determined that the taxable value of the Subject Property was \$11,300 for tax year 2017.

12. The County Assessor assessed the Subject Property in Case No. 17R-235 at \$10,700 for tax year 2018.
13. The Taxpayer protested this value to the County Board and requested an assessed value of \$1,000 for tax year 2018.
14. The County Board determined that the taxable value of the Subject Property was \$10,700 for tax year 2017.
15. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
16. A Single Commissioner hearing was held on January 25, 2019, at the Nebraska State Office Building, 1313 Farnam, Room E (301E), Omaha, Nebraska, before Commissioner Steven Keetle.
17. Curtis D. and Linda Morrow were present at the hearing.
18. 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

19. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
20. The Commission's review of the determination of the County Board of Equalization is de novo.²
21. 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
22. 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
23. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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).

24. 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
25. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

26. The Taxpayer purchased the Improved Parcel and the directly adjacent Unimproved Parcel together in 2013 for a total purchase price of \$46,002.
27. At the time of the Taxpayer's purchase of the properties the assessed value of the land component of each parcel was \$400.
28. 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
29. The Taxpayer alleged that the value of the land component is too high as lots in the neighborhood were selling for \$5,000 or less. He further alleged that the sidewalk and driveway on the Subject Properties were in need of repair and that therefore the assessed value should be closer to \$400.
30. The Taxpayer alleged that the Unimproved Parcel sloped east toward the river and contained debris from a prior structure located on the parcel that no longer exists.
31. The Taxpayer did not offer any examples of lots that sold in the area of the Subject Properties.
32. The Taxpayer did not offer any information that would allow the Commission to quantify the impact of the condition of the sidewalk and driveway, slope, or material from prior structure on the value of the land component of the Subject Properties.
33. The County Appraiser stated that the County Assessor's office did a land value study for the 2017 tax year that reallocated the value attributed to the land component of residential properties in Douglas County, which was the cause of the increase in the assessed value of the land component of the Subject Properties.
34. For the 2018 assessment year the County Assessor's office conducted a reappraisal of the Subject Property's area resulting in a reduction in the assessed value of the land components of the Subject Properties.

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).

35. The assessed land value component of the Subject Properties had not changed in over a decade preceding the 2017 land value study.¹¹
36. The County Board presented information regarding all of the qualified sales of unimproved properties that occurred in the economic area of the Subject Property to support the assessed value of the land component of the Improved Parcel and the Unimproved Parcel for tax year 2017 and 2018.
37. The Taxpayer alleged that the home and shed located on the Improved Parcel were in need of repairs and that the assessed value should be reduced. The Taxpayer did not present information regarding the repairs that needed to be made to the Improved Parcel for the 2017 or 2018 assessment year.
38. The Taxpayer alleged that the recent sales of comparable properties located to the north and west of the Subject Property indicted that he Subject Property was over-valued.
39. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
40. “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
41. The Taxpayer presented printouts from the County Assessor’s web site for properties that he alleged were comparable to the Subject Property.
42. The information presented indicates that the properties offered as comparable had lower condition ratings than the Improved Parcel and did not have outbuildings, while the Improved Parcel does.
43. The Taxpayer did not present the PRF for the parcels that she alleged were comparable to the Subject Property. Without the details contained in the PRF, the Commission is unable to determine the specific contributions to value of the various amenities or features of these other properties to determine the necessary adjustments to make them comparable to the Subject Property.¹⁴
44. The County Board presented the Property Record File (PRF) for the Improved Parcel for tax years 2017 and 2018 as well as information regarding all of the qualified sales that occurred in the economic area of the Subject Property, which were used in determining the value attributed to each of the characteristics of residential properties in that area, including the Subject Property. The sales information demonstrates that the County

¹¹ For two of these years the Subject Property was owned by the Department of Veterans affairs and its assessed value exempted by the County Board.

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 For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 9, 2018, 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.*

Assessor considered one of the Taxpayer's sale properties as a qualified sale considered and utilized by the County Assessor when determining assessed values but that the other was not considered a qualified sale.

45. The County Appraiser indicated that based on his review of the Subject Properties his opinion of value for the Improved Parcel would be \$53,400 for tax year 2017.¹⁵
46. For the property found in Case No. 17R 0230 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.
47. For the property found in Case No. 17R 0230 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.
48. For the properties in Case Nos 17R 0231, 18R 0234 and 18R 0235 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.
49. For the properties in Case Nos 17R 0231, 18R 0234 and 18R 0235 the Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 17R 0230 for tax year 2017, is vacated and reversed.
2. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property in Case Nos 17R 0231, 18R 0234 and 18R 0235 for tax years 2017 and 2018 are affirmed.
3. The taxable values of the Subject Property are:

Case No. 17R 0230

Land	\$11,900
<u>Improvements</u>	<u>\$41,500</u>
Total	\$53,400

Case No. 17R 0231

<u>Land</u>	<u>\$11,300</u>
Total	\$11,300

¹⁵ This is the value determined for the Improved Parcel by the County Board for the 2018 tax year.

Case No. 18R 0234

Land	\$11,200
<u>Improvements</u>	<u>\$42,200</u>
Total	\$53,400

Case No. 18R 0235

<u>Land</u>	<u>\$10,700</u>
Total	\$10,700

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2017 and 2018.
8. This Decision and Order is effective on February 12, 2020.

Signed and Sealed: February 12, 2020

Steven A. Keetle, Commissioner