

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Blake A. Athen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0232

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 3,881 square foot two story residence, with a legal description of: Linden Estates, Lot 86 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$624,500 for tax year 2017.
3. Blake A. Athen (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$573,051 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$624,500 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 February 12, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Blake A. Athen 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 Subject Property is a 3,881 square foot two story residence built in 1992 with a quality rating of very good and a condition rating of good.
17. The Taxpayer alleged that the condition rating of the Subject Property is too high, resulting in an assessed value that is too high.
18. The Taxpayer discussed the condition of the Subject Property including the floors, tile, basement countertops, granite countertops and cabinets in the kitchen, fixtures, deck, siding, landscaping, and driveway.
19. The information presented to the Commission did not demonstrate that the condition rating of the Subject Property should be lower than the good rating placed upon it by the County.
20. The Taxpayer alleges that assessed value of the Subject Property is not equalized with the assessed values of other comparable properties.

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).

21. The Taxpayer presented a chart showing information about properties near the Subject Property. The Taxpayer alleged that this chart showed that the assessed value of the Subject Property was not equalized with comparable properties.
22. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
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.”¹⁰
24. The Taxpayer presented printouts from the County Assessor’s web site for three properties that he alleged were most comparable to the Subject Property. The printouts presented were for the 2019 assessment year rather than the 2017 assessment year; 2017 is the assessment year before the Commission in the present appeal.
25. The information contained in the printouts show that there were both similarities and differences between the Subject Property and the properties offered as comparables. For example, two of the properties were one and one-half stories while the Subject Property is a two story. One of the printouts offered shows a quality rating of very good for assessment year 2019, but other information presented shows that this same property had a quality rating of good plus for tax year 2017.
26. The Taxpayer did not present the 2017 Property Record Files (PRF) for the parcels that he alleged were comparable to the Subject Property. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of these other properties, such as finished basement square footage, garage size, fireplaces, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹¹
27. The Taxpayer alleges that the County Board, when it lowered the assessed value of other properties located on the same street as the Subject Property while not commensurately lowering the value of the Subject Property, failed to fulfill its plain duty to equalize property values.¹²
28. The Taxpayer alleged that the County Board reduced the condition rating of the property located at 13918 Charles Street, which is across the street from the Subject Property, at the protest level, while not taking the same action regarding the Subject Property. The

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

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ 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.*

¹² See, *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008), where the board reduced the value of a comparable property to 75.8 percent of its market value and kept Zabawa’s property at its full market value.

Taxpayer stated that in his opinion the condition of the Subject Property and the property at 13918 Charles were comparable.

29. The 2017 PRF and final decision of the County Board regarding the property at 13918 Charles were not presented to the Commission; only a valuation history for the property and a portion of the protest packet were presented. This protest packet indicates that pictures were presented to the County Board regarding the condition of the property at 13918 Charles, as well as water damage from a roof that the owners state was improperly installed. The pictures of the property located at 13918 Charles that were presented to the County Board were not presented to the Commission.
30. The information presented by the Taxpayer shows that the County Board took different actions on different protests for properties located on the same street as the Subject Property because different information was presented for the County Board to review. The information before the Commission does not demonstrate that the County Board adjudicated these protests at greatly disparate amounts. From the information presented to the Commission, the differences in the actions taken by the County Board at the protest level appear to relate to the differences in the evidence presented to the County Board, which demonstrated different facts leading to different conclusions based on those facts.
31. 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.
32. 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.

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	\$134,700
<u>Improvements</u>	<u>\$489,800</u>
Total	\$624,500

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 January 22, 2020.

Signed and Sealed: January 22, 2020

Steven A. Keetle, Commissioner