

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael S. Cassling Revocable Trust,
Michael S. Cassling, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0236

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

Background

1. The Subject Property is a residential parcel improved with a 3,987 square foot one and one-half story residence and 472 square foot bath house, with a legal description of: Bay Wood Rep 5* Lot 1 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$977,700 for tax year 2017.
3. Michael S. Cassling Revocable Trust, Michael S. Cassling, Trustee (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$735,242 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$977,700 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 March 13, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Mark J. LaPuzza, attorney with Pansing, Hogan, Ernst, & Bachman, LLP was present at the hearing for the Taxpayer.
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

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 value of the land component of the Subject Property is improperly classified resulting in an assessed land value that is not equalized with other comparable properties.
17. The Taxpayer presented a table containing information about seven different properties located near the Subject Property. The Taxpayer presented information from the County Assessor’s web site regarding each of the seven properties.
18. The Taxpayer demonstrated that the land component of properties with lot frontage adjoining the Zorinsky Lake property were given a lake frontage attribute with a multiplier of 1.5.
19. The Taxpayer presented pictures and maps of the Subject Property and adjoining properties along with a discussion of the proximity of the Subject Property to the Zorinsky Lake property as well as trees on adjoining parcels and the view of the lake from the Subject Property.

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 has demonstrated that the Subject Property does not have frontage on the Zorinsky Lake property and that the lake frontage attribute and land value multiplier should be removed for tax year 2017.
21. The Taxpayer alleged that the value of the land component of the Subject Property should be reduced to account for the impact of a gas main easement or “bunker” located on the Subject Property.
22. The Taxpayer did not present information to quantify the impact of the gas main easement or “bunker” on the value of the land component or to allow the Commission to quantify the impact of this factor on the value of the Subject Property.
23. The Commission finds and determines that the value of the land component for tax year 2017 is \$299,900.⁹
24. The Taxpayer alleged that the value of the improvements located on the Subject Property was not equalized with the value of comparable properties.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
26. “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.”¹¹
27. The Taxpayer did not present the 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 characteristics, amenities or features of these other properties, such as style of construction (ranch, two story, one and one-half story), condition, finished basement square footage, walkout basements, garage size, outbuildings, decks, swimming pools, patios, fireplaces, etc., to determine if the improvements are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹²
28. 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.
29. 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.

⁹ $\$449,900 \div 1.5 = \$299,900$ (rounded).

¹⁰ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹² 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.

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	\$299,900
<u>Improvements</u>	<u>\$527,800</u>
Total	\$827,700

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 31, 2020.

Signed and Sealed: January 31, 2020

Steven A. Keetle, Commissioner