

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wesley D. Asche,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0291

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 1,696 square foot one and one-half story residence, with a legal description of: Home Acres Lot 4 Block 4, 122 x 142, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$78,100 for tax year 2017.
3. Wesley D. Asche (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$52,800 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$78,100 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 9, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Wesley D. Asche 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 assessed value of the Subject Property is too high because the condition rating as determined by the County Assessor does not reflect the actual condition of the Subject Property.
17. The Taxpayer did not present any evidence that would demonstrate that the County Assessor’s condition rating of average for the Subject Property is incorrect.
18. The Taxpayer alleged that the assessed value of the Subject Property should be reduced because its quality and characteristics limited potential purchasers and renters.
19. The Taxpayer offered no information to quantify the impact of the alleged limitations on purchasers or renters on the value of the Subject Property.
20. The Taxpayer alleged that the assessed value of the Subject Property was higher than market value as reflected by recent sales.
21. The Taxpayer presented three properties which recently sold in the area of the Subject Property, and alleged that these sales demonstrated the market value of the Subject Property was lower than its assessed value.

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).

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 County Board presented the Property Record Files (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 per square foot assessed values of the Subject Property and the other properties presented.
25. The Taxpayer did not present the PRF for any of the sold properties presented. 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 size, quality, condition, fireplaces, etc.¹¹
26. The Taxpayer produced information from the County Assessor’s website regarding each of the three sold properties. In addition to being incomplete as compared to the PRF, the information for some of the properties presented and discussed by the Taxpayer did not contain all of the information from the County Assessor’s website.
27. The information from the County Assessor’s website shows that the sold properties are different styles of construction than the Subject Property, are smaller, and have either a smaller or no garage. Further, the information presented by the Taxpayer does not indicate whether two of the three sold properties have basements like the Subject Property, and while the picture of the third indicates that it likely has a basement, the Commission cannot determine the amount of the basement square footage from the information provided.
28. The Commission finds and determines that the sold properties presented by the Taxpayer are not comparable to the Subject Property and cannot be used to determine the value of the Subject Property.
29. 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.

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 March 19, 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.*

30. 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	\$ 1,500
<u>Improvements</u>	<u>\$76,600</u>
Total	\$78,100

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 December 2, 2020.

Signed and Sealed: December 2, 2020

Steven A. Keetle, Commissioner