

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Beth A. Asche et al. Trust,
Beth A. Asche,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0293

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 1,240 square foot ranch style residence, with a legal description of: Maenner-Hillside Add Lot 16 Block 8 Tria S 12 W 67.32 Ft Lot 15 & -Ex Tria N 12 E 67.31 Ft-, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$143,500 for tax year 2017.
3. Beth A. Asche, et al. Trust, Beth A. Asche (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$130,300 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$143,500 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 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 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 Subject Property should be reduced due to water infiltration into the Subject Property because of its location at the bottom of a hill. The Taxpayer alleged that the location of the Subject Property causes the basement of the Subject Property to flood, reducing its value.
17. The Taxpayer did not present information to demonstrate damage to the Subject Property caused by water infiltration, basement flooding, or the cost to remediate any damage to the Subject Property.
18. The Taxpayer alleged that the condition rating of the Subject Property as determined by the County Assessor was too high based on the actual condition of the property.
19. The Taxpayer did not present any evidence that would demonstrate that the County Assessor’s condition rating of good for the Subject Property is incorrect. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other similar properties.

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 County Board presented the Property Record File (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.
21. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the amount of the contribution to value of the various amenities or features of the other properties presented by the Taxpayer, such as condition, garage(s), basement finish, etc.⁹
22. The Taxpayer produced information from the County Assessor's website regarding twelve properties located near the Subject Property. 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.
23. The information presented by the Taxpayer indicates that the assessed value of the Subject Property should be higher than the other properties presented to the Commission due to the superior characteristics of the Subject Property as compared to the available information regarding the other properties.
24. The Subject Property, for example, is one of only two properties presented with a condition rating of good as opposed to the lower average rating. Further, the other property with a condition rating of good differs from the Subject Property in that it does not have a garage.
25. In addition to a single car attached garage, the Subject Property has an 864 square foot detached garage, an amenity that makes it superior to the other properties presented which either have only a single car attached garage or, as noted above, no garage.
26. The Subject Property is also the only property presented which has an enclosed screen porch.
27. 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.
28. 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.

⁹ 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.*

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	\$ 20,800
<u>Improvements</u>	<u>\$122,700</u>
Total	\$143,500

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 December 2, 2020.

Signed and Sealed: December 2, 2020

Steven A. Keetle, Commissioner