

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jeffrey H. Radcliffe,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0295

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

Background

1. The Subject Property is a 1,068 square foot split entry style residential parcel, with a legal description of: Woodhaven Meadows Lot 2 Block 0, All Lots 1 & 1A & -Ex S 7ft-Lots 2 & 2A Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$143,700 for tax year 2017.
3. Jeffrey H. Radcliffe (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$118,400 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$135,000 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 January 23, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven A. Keetle.
7. Jeffrey H. Radcliffe 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 amount of increase from the prior year of the assessed value of the Subject Property was too high relative to other properties in the neighborhood and that therefore the assessed value should be reduced.
17. 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
18. The Taxpayer alleged that the Subject Property was assessed at a greater amount per square foot than other comparable properties in the neighborhood.
19. The Taxpayer presented information from the County Assessor’s website regarding one property located near the Subject Property as well as the per square foot assessed values of other properties that the Taxpayer alleges are comparable to the Subject Property.

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).

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).

20. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
21. “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.”¹²
22. The Taxpayer did not present the Property Record Files (PRF) for the parcels that he alleged were comparable to the Subject Property but rather presented printouts from the County Assessor’s web site. 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, to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹³
23. The Taxpayer alleged that the assessed value of the Subject Property should be reduced because it was an unusual one bedroom floorplan and it was located on a busy street. The Taxpayer did not present any information to quantify the impact of the floorplan or the location of the property on a busy street on the value of the Subject Property.
24. Finally, the Taxpayer alleged that the condition of the Subject Property as indicated in the County’s PRF was overstated and should be reduced. The Taxpayer offered information and answered questions regarding the condition of the interior of the Subject Property as of the assessment date.
25. The Commission finds that the condition of the Subject Property as of the assessment date is average rather than the good rating that the County Assessor’s valuation model used to value the Subject Property. Based on the information and documents presented, the change in condition from good to average would reduce the assessed value of the improvements on the Subject Property to \$102,700, which together with a land value of \$20,000, would result in a total assessed value of \$122,700.¹⁴
26. 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.
27. 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.

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ 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.*

¹⁴ The Market Calculation Detail prepared by the County Assessor’s office and contained in the PRF attributed \$10,000 to the assessed value of the Subject Property for having a condition rating of good rather than average, removing this attribute would reduce the determination of value of the improvements from \$112,700 as previously determined by the County’s assessment model to \$102,700. The County Board previously determined that the land value of the Subject Property was \$20,000.

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	\$ 20,000
<u>Improvements</u>	<u>\$102,700</u>
Total	\$122,700

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 December 3, 2019.

Signed and Sealed: December 3, 2019

Steven A. Keetle, Commissioner