

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry D. McIntyre,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0322, 17R 0323 & 17R 0324

Decision and Order Affirming the
Determinations of the Douglas
County Board of Equalization

Background

1. The Subject Properties in Case Nos. 17R 0322 and 17R 0323 are adjacent vacant residential lots located on Crown Point Avenue with legal descriptions of: Saddle Hills Add Lot 4 Block 2 LT 4 105 x 140, Omaha, Douglas County, Nebraska; and Saddle Hills Add Lot 5 Block 2 LT 5 105 x 140, Omaha, Douglas County, Nebraska, respectively (Lots 4 & 5).¹
2. The Subject Property in Case No 17R 0324 is a residential parcel improved with a 940 square foot ranch style residential property with an attached 2,100 square foot pole barn and a 768 square foot detached garage, with a legal description of Keystone Park Lot 55 Block 0 N 457.5 S 502.5 E 86.7 W 693.8 Ft Lot 55, Omaha, Douglas County, Nebraska.
3. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0322 at \$26,500 for tax year 2017.
4. Larry D. McIntyre, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$6,000 for tax year 2017.
5. The County Board determined that the taxable value of the Subject Property was \$26,500 for tax year 2017.
6. The County Assessor assessed the Subject Property in Case No. 17R 0323 at \$24,300 for tax year 2017.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$6,000 for tax year 2017.
8. The County Board determined that the taxable value of the Subject Property was \$24,300 for tax year 2017.
9. The County Assessor assessed the Subject Property in Case No. 17R 0324 at \$125,900 for tax year 2017.
10. The Taxpayer protested this value to the County Board and requested an assessed value of \$100,000 for tax year 2017.

¹ The Taxpayer also owns and presented information regarding an improved residential parcel located at 8032 Himebaugh Ave which is adjacent to the Subject Properties in Case No. 17R 0322 and 17R 0323, but the value of that parcel was not appealed to the Commission for the 2017 tax year.

11. The County Board determined that the taxable value of the Subject Property was \$125,900 for tax year 2017.
12. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
13. A Single Commissioner hearing was held on July 22, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
14. Larry D. McIntyre was present at the hearing.
15. Stan Mlotek, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

Applicable Law

16. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²
17. The Commission's review of the determination of the County Board of Equalization is de novo.³
18. 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."⁴ 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."⁵
19. 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.⁶
20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
21. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸

² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

³ 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).

⁴ *Brenner* at 283, 811.

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

22. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

23. The Taxpayer alleged that the assessed value of all three of the Subject Properties increased too much from the prior assessments.
24. The Taxpayer further alleged that the value of the Lots 4 & 5 should be the same as the prior assessment year.
25. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹
26. The County Appraiser stated that there was a land valuation study performed by the County Assessor which indicated that assessed land values were low and resulted in land values for most residential properties throughout Douglas County increasing for the 2017 assessment year.
27. The Taxpayer alleged that the traffic on Crown Point Avenue had a negative impact on the value of Lots 4 & 5.
28. The County Board presented the Property Record Files (PRF) for Lots 4 & 5 which indicate that a negative factor was applied to the value of Lots 4 & 5 to account for traffic.
29. The PRFs for Lots 4 & 5 show that the differences in their assessed valuations are due to differences in the actual size of Lots 4 & 5.
30. The Taxpayer alleged that the majority of building in the area of Lots 4 & 5 had been completed in the 1960s and 1970s and that the area was not now a desirable area for residential building. The Taxpayer stated that the home located at 8032 Himebaugh Ave was built in 1982. The Taxpayer further alleged that crime in the area and the condition of adjacent parcels negatively impacted the value of Lots 4 & 5. The Taxpayer presented pictures of various parts of Lots 4 & 5 as well as other improved parcels located near Lots 4 & 5. The Taxpayer did not present information to quantify the impact of these factors on the value of Lots 4 & 5.
31. The Taxpayer stated that there were at least six vacant residential parcels in the area, including Lots 4 & 5. The Taxpayer didn't know if any of these properties were listed for sale or what asking price they were listed for, or if any vacant residential properties in the area had recently sold.
32. The County Board presented information regarding vacant residential parcel sales similar to Lots 4 & 5 to support the County Board's determination of value for Lots 4 & 5.

⁹ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹⁰ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ 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).

33. The Taxpayer stated that the improvements on the Subject Property in Case No. 17R 0324 (the Improved Subject Property) were not useable as a residence due to their condition but were only usable for storage as of the assessment date. The Taxpayer further alleged that the location of the Improved Subject Property next to a commercial lot and the associated commercial activity further reduced its value.
34. The Taxpayer presented photographs of the exterior of the improvements on the Improved Subject Property as well as photographs of the surrounding properties taken from the Improved Subject Property. The Taxpayer did not present pictures or other information regarding the condition or characteristics of the interior of the improvements on the Improved Subject Property for the Commission to evaluate.
35. The Taxpayer stated that if the zoning of the Improved Subject Property were changed from residential to commercial its current assessed value would be appropriate but that the City of Omaha has refused to change the zoning. The Taxpayer did not state when the request for rezoning the Improved Subject Property was made or the basis for the action or lack of action on the request by the City of Omaha.
36. The County Appraiser stated that if the zoning of the Improved Subject Property were changed from residential to commercial its assessed value would be higher, but he did not indicate what that value might be.
37. The Taxpayer alleges that the values of all of the Subject Properties should be lowered based on the information contained in the UNO Omaha Single Family Housing Prices (2000-2018) research report.
38. The research report states that “It is important to point out that even though these zip codes are smaller and more homogeneous than the other submarket areas, there is still likely to be considerable housing characteristic heterogeneity within many of them. For this reason, *the results of this study are not appropriate for direct use in tax protests*, which should be based on smaller and more detailed neighborhood comparable sales analyses.” (emphasis added).
39. The Taxpayer did not present any sales or other analysis relating the information presented in the report to the specific assessed values of the Vacant Subject Properties or the Improved Subject Property, or to properties with characteristics similar to them.
40. 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.
41. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2017, are affirmed.
2. The taxable value of the Subject Property in Case No. 17R 0322 for tax year 2017 is:

<u>Land</u>	\$ 26,500
Total	\$ 26,500

3. The taxable value of the Subject Property Case No. 17R 0323 for tax year 2017 is:

<u>Land</u>	\$ 24,300
Total	\$ 24,300

4. The taxable value of the Subject Property Case No. 17R 0324 for tax year 2017 is:

Land	\$ 25,500
<u>Improvements</u>	\$100,400
Total	\$125,900

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2017.
9. This Decision and Order is effective on May 15, 2020.

Signed and Sealed: May 15, 2020

Steven A. Keetle, Commissioner