

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Barry D. Couch,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0361

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

Background

1. The Subject Property is a 908 square foot raised ranch residential property, with a legal description of: Overlook Add Lot 45 Block 0 LT 44 & E ½, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$137,800 for tax year 2017.
3. Barry D. Couch (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$101,700 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$124,700 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 January 23, 2019, at the Omaha State Office Building, 1313 Farnam, Room E (301E), Omaha, Nebraska, before Commissioner Steven Keetle.
7. Barry D. Couch was present at the hearing.
8. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, 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 characteristics of the Subject Property as listed in the County Assessor’s Property Record File (PRF) are incorrect, resulting in too high an assessed value.
17. The Taxpayer alleged that the Subject Property is negatively influenced by its location on busy Pacific Street and that the value of the land component should be reduced.
18. While the PRF for the Subject Property does not indicate that the location of the Subject Property on Pacific Street is a negative influence on value, information from the Assessor’s website that was provided shows that properties located on Pacific Street, including the Subject Property, all have a negative land attribute of “Traffic 5” listed. According to the information presented from the Assessor’s website, the land values for the properties located on Pacific Street have similar values: \$26,100 for 8,976 sq. ft., \$23,300 for 5,940 sq. ft. \$22,800 for 5,544 sq. ft., and \$22,500 for 5,280 sq. ft.
19. The Taxpayer alleged that land values for parcels not located on Pacific Street were the same as those located on Pacific Street. The land value information provided regarding

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).

parcels not located on Pacific Street consisted only of land values; no PRF or Assessor website information was presented, and no information regarding the lot sizes was presented.

20. 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 website. Without the details contained in the PRF, the Commission is unable to evaluate the contributions to value of the various amenities or features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.⁹
21. The Taxpayer alleged that the condition rating of the Subject Property should be Average rather than Good. The Taxpayer presented photographs and discussed the condition of the Subject Property as of the assessment date.
22. Based on the information presented, the Commission finds and determines that the correct condition rating of the Subject Property is Average.
23. The assessment model information presented regarding the assessment of the Subject Property indicates that a reduction of the condition rating from Good to Average would reduce the assessed value of the Subject Property by \$15,000, for tax year 2017.
24. The Taxpayer alleged that the basement finish of the Subject Property should be listed as fair finish rather than as finished basement. The Assessor's website information presented shows that other properties do have fair finish listed rather than finished for basement space; however, the information does not demonstrate how that difference impacts assessed value. No information regarding the impact of classifying the basement area as fair finish rather than finished was presented to allow the Commission to analyze the Taxpayer's claim.
25. The County Board conceded that the market age of the Subject Property should be 69 rather than the 60 indicated in the assessment model information for the Subject Property and correcting that factor would reduce the value of the Subject Property by \$2,250.
26. The Taxpayer alleged that the assessed value of the Subject Property was not uniform and proportionate with other comparable properties.
27. The Taxpayer presented two charts, one with information regarding the levels of value of properties located on Pacific Street, and another containing information about the per square foot values of parcels the Taxpayer alleged were comparable to the Subject Property.
28. Because the Taxpayer did not provide the PRFs for any of the parcels presented, the Commission cannot determine the contributions to value of the various amenities or features of these other properties. The Commission cannot determine if the other

⁹ 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.*

properties are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.

29. The Taxpayer alleged that the assessed value of the Subject Property is too high based on comparable sales.
30. The Taxpayer presented a table containing information about three other properties that he alleged demonstrated that the value of the Subject Property was not uniform and proportionate with other comparable properties. One of the properties presented sold shortly after the assessment date.
31. The Taxpayer requests that a per square foot value be set for the Subject Property based on an average of a combination of assessed per square foot values and the per square foot sales price of the properties in the table. Once again, the Taxpayer's failure to provide PRFs for the parcels presented prevents the Commission from determining whether such a value would be correct.
32. The Commission finds and determines, based on the information presented at the hearing, that the assessed value of the improvements on the Subject Property should be reduced by \$17,250, which reflects the change in condition from Good to Average and a change in market age from 60 to 69. This would result in an assessed improvement value of \$81,350, which, when added to the assessed value of the land of \$26,100, would result in a total assessed value of \$107,450 for tax year 2017.
33. 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.
34. 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.

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	\$ 26,100
<u>Improvements</u>	<u>\$ 81,350</u>
Total	\$107,450

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