

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Russell W. Sass,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0369

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

Background

1. The Subject Property is a 1,368 square foot ranch style residential property, with a legal description of: Lands SEC-TWN-RGE 17-15-11 –Ex pt for Rd- Irreg S 189.39 Ft SW ¼ NW ¼ 4.9AC, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$248,800 for tax year 2017.
3. Russell W. Sass (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$174,900 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$174,900 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. Russell W. Sass, Patricia A. Sass, and Kelley A. Sass were 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 land value of the Subject Property was increasing while the land value of adjacent parcels was decreasing and that the value of the Subject Property should be decreased as well.
17. The Taxpayer presented information regarding several properties located near the Subject Property that the Taxpayer alleges are comparable to the Subject Property.
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
19. The parcels presented were substantially different than the Subject Property. The Subject Property consists of approximately 4.9 acres while the other properties ranged in size from 1.18 to 0.2 acres.
20. The County Board presented information to demonstrate that the assessed value of the Subject Property was determined using a different assessment model that was based on different sales than a smaller property would use.

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

21. The Commission finds and determines that the properties that were presented to demonstrate that the assessed value of the Subject Property should be decreased are not comparable to the Subject Property.
22. The Taxpayer alleged that the assessed value of the Subject Property should be reduced because it was a 1971 modular home and that its valuation was too high when compared to other modular homes built after 1971, due to the differences in building code standards.
23. The County Assessor stated that the differences between different styles and standards of construction was accounted for in the quality rating of the property. Modular homes, for example, were classified as fair quality improvements. The Subject Property is classified as a fair quality and average condition.
24. The Taxpayer did not present the Property Record Files (PRF) for the parcels that they alleged were comparable to the Subject Property. Without the details contained in the PRF, particularly the quality and condition ratings, 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.¹⁰
25. “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.”¹¹
26. The Taxpayer discussed some of the differences between a 1971 modular home and a post-1971 modular home but did not present information to quantify the impact of the differences between a modular home built in 1971 and a modular home built after 1971 on the assessed value of the Subject Property.
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.

THEREFORE 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.

¹⁰ 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.*

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$113,000
<u>Improvements</u>	<u>\$ 61,900</u>
Total	\$174,900

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