

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Walter R. Louis Trust,  
Union Bank and Trust, Trustee,  
John B. Atkins, Vice President & Senior  
Trust Officer,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0392

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

Background

1. The Subject Property is a residential parcel improved with a 3,892 square foot ranch style residence, with a legal description of: Lands Sec-Twn-Rge 24-16-12 Irreg NE 12.21 AC NE ¼ NW ¼, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$719,600 for tax year 2017.
3. Walter R. Louis Trust, Union Bank and Trust, Trustee, John B. Atkins, Vice President & Senior Trust Officer (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$622,100 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$719,600 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 Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. John B. Atkins, Mike Kuzma, and Faith Louis were 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.<sup>1</sup>

---

<sup>1</sup> See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property increased at a greater amount from the prior year’s assessment than other comparable properties in the area and that this increase was significantly more than the average for the area. The Taxpayer requested that the valuation be set at the prior assessed value increased by a percentage equal to the average percentage of valuation increase for all of the properties presented to the Commission.
17. The Taxpayer offered spreadsheets containing information about the percentage change in value for properties in the area of the Subject Property as well as other properties the Taxpayer felt were comparable to the Subject Property.

---

<sup>2</sup> 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).

<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

18. The Taxpayer did not provide any Property Record Files (PRF) for any of the properties listed on the spreadsheets for the Commission to make a determination if they were indeed comparable.<sup>9</sup>
19. 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.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
21. The information that the Taxpayer provided regarding the properties on the spreadsheets was from the assessor's web site and indicates that none of the properties presented are comparable to the Subject Property. For example, the property the Taxpayer alleges is most comparable to the Subject Property is a different style of construction, constructed of different materials, has a different quality rating, has a different condition rating, was recently remodeled, has over twice the square footage, and is located on a smaller lot.
22. The PRF for the Subject Property indicates that a land valuation study was conducted and land values were adjusted for the 2017 assessment year.
23. The information presented by the Taxpayer demonstrates that, after this adjustment to the assessed value of the land components of all the properties in the area, land values increase proportionally as the size of the lot increases, while before the adjustment, the land values in the area were not proportional to the size of the lots.
24. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>11</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>12</sup>
25. Additionally, "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."<sup>13</sup>
26. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to significant deferred maintenance and management costs for both the land and improvements.

---

<sup>9</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 21, 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.*

<sup>10</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>11</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>12</sup> 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).

<sup>13</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008).

27. The Taxpayer did not present information to quantify the impact of the alleged deferred maintenance and management costs on the value of the Subject Property.
28. The Taxpayer did not present information to demonstrate that the condition of the Subject Property due to any deferred maintenance or other issues would warrant a change from the condition rating of average as determined by the County Assessor.
29. The Taxpayer's discussion of the condition of the in-ground swimming pool on the Subject Property demonstrated that it is non-functional and would require significant repairs to be made functional.
30. The Commission finds and determines that the in-ground swimming pool on the Subject Property adds no value and should be removed from the assessed value of the Subject Property.
31. The Commission further finds and determines that the value of the Subject Property for tax year 2017 is \$534,555<sup>14</sup> for the improvement component and \$155,100 for the land component, resulting in a total assessed value of \$689,655.
32. 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.
33. 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	\$155,100
<u>Improvements</u>	<u>\$534,555</u>
Total	\$689,655

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.

---

<sup>14</sup> \$564,500 (assessed value of the improvement component from PRF) - \$29,945 (Value of the in ground pool from PRF (\$31,520 x .95 neighborhood adjustment) = \$534,555.

7. This Decision and Order is effective on December 2, 2020.

Signed and Sealed: December 2, 2020

---

Steven A. Keetle, Commissioner