

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jennifer Zhang,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0394

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

Background

1. The Subject Property is a residential parcel improved with a one and one-half story residence, with a legal description of: Bay Shores, Lot 12 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$636,700 for tax year 2017.
3. Jennifer Zhang (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$530,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$636,700 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 September 9, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Richard J. Henkenius, Attorney at Law, Jennifer Zhang, and Steve Bell 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 1.¹
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

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 alleges that the increase in the assessed value from the prior year’s assessment, particularly the increase in land value, is unreasonable and arbitrary and the increase in assessed value was greater than other properties in the neighborhood.
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 Additionally, the differences in the changes of the Subject Property and other properties in the neighborhood is only relevant to the current year’s assessment if the differences resulted in values that were not equalized for the current assessment year.
18. The Taxpayer alleges that the assessed value of the Subject Property is not equalized with the assessed value of other comparable properties.

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).

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).

19. The County Board provided the Property Record File (PRF) for the Subject Property which indicates that the County Assessor conducted a land value review for the entire county which was implemented for tax year 2017.
20. The Taxpayer presented the PRFs for six other properties located in the same neighborhood as the Subject Property.
21. The County Appraiser stated that after the implementation of the land review, the value of the land component of the Subject Property, based on its location and characteristics such as the lake view, were in line and consistent with other land values.
22. When reviewing the land components of the seven properties presented, the PRFs demonstrate two types of lots, those with over 18,000 square feet that also have lake views and those with less than 16,000 square feet without lake views. Each of these two groups has different value ranges, but within those groups, as the size of the lot increases, so does the lot value, with the larger lots having the higher values.
23. The PRFs also demonstrate that the differences in values between the properties presented are due to differences in the characteristics of the properties.
24. The Subject Property, for example, is improved with a one and one-half story residence with significantly more finished basement than any of the other properties presented; this basement finish accounts for a \$64,690 of the total assessed value.¹¹ The Subject Property also has the largest garage, the largest patio, largest and greatest number of decks, and, of the two properties with pools, the largest in-ground pool as well.
25. The property next door, which the Taxpayer alleged was the most comparable to the Subject Property, is slightly larger and has two more fireplaces than the Subject Property, but it lacks any basement finish and a pool. The PRFs demonstrate that these difference in characteristics account for the differences in their assessed values.
26. The Taxpayer alleges that recent sales demonstrate that the assessed value of the Subject Property is greater than actual value.
27. The Taxpayer presented five sales of properties, including the Subject Property, which occurred in the Subject Property's neighborhood. These sales occurred between October 2005 and June 2014.
28. The County Board presented a list of 32 sales of properties in the same economic area as the Subject Property which occurred between October 2014 and November 2016. Thirteen of these sales occurred in the Subject Property's neighborhood.
29. The sales presented by the Taxpayer are outside of the two year assessment window that counties typically use for determining values for residential properties.¹²
30. The sales presented by both the Taxpayer and the County Board have a wide range of characteristics. Looking at just the sales of properties that, like the Subject Property, are one and one-half story residences with a quality rating of very good and a condition rating of average, the Taxpayer's sales occurred between five and eleven years prior to

¹¹ \$71,875 * 0.09 NBHD Adj = \$64,688 rounded to \$64,690

¹² See, Title 350 Neb. Admin. Code, ch 17, §003.05A (7/17).

the assessment date and have sales price per square foot of between \$101.45 and \$198.46, while the County Board's sales all occurred less than two years prior to the assessment date and have sales price per square foot between \$106.41 and \$163.94. None of the Taxpayer's sales or the County Board's sales has as much basement finish as the Subject Property.

31. The sales information presented to the Commission does not support the Taxpayer's contention that the assessed value of the Subject Property is greater than its actual value.
32. 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.
33. 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.

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

Land	\$134,700
<u>Improvements</u>	<u>\$502,000</u>
Total	\$636,700

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 2, 2020.

Signed and Sealed: December 2, 2020

Steven A. Keetle, Commissioner