

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paula G. Yager,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0403 & 17R 0404

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

Background

1. The Subject Properties are unimproved residential lots, with a legal descriptions of: Riverside Hills Lot 28 Block 0 Irreg (17R 0403) and Riverside Hills Lot 30 Block 0 Irreg (174R 0404), both located in Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0403 at \$64,300 for tax year 2017.
3. Paula G. Yager (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0403 was \$64,300 for tax year 2017.
5. The County Assessor assessed the Subject Property in Case No. 17R 0404 at \$63,200 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$63,200 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on February 11, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Paula G. Yager was present at the hearing.
11. 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

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

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

13. The Commission's review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Subject Properties are vacant residential lots of .68 (17R 0403) and .65 (17R 0404) acres located between developed residential properties on Riverside Drive. The Taxpayer's residence is located between the Subject Properties, but the lots have not been combined into a single parcel for assessment purposes.
20. The Taxpayer alleged that the sales of nearby vacant residential lots demonstrate that the actual value of the Subject Properties is less than the assessed value.
21. The Taxpayer stated that a lot two lots up Riverside Drive from the Subject Properties was transferred by the City of Omaha for \$0 in 2015, and the lot next to that one, three lots up Riverside Drive from the Subject Properties, sold for \$32,500 in 2012.

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).

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).

22. The County Appraiser stated that two lots near the Subject Properties sold near the assessment date. A lot six lots up Riverside Drive from the Subject Properties sold for \$75,000 on March 1, 2018, and a lot two blocks away from the Subject Properties on 222nd Street sold on for \$90,000 on January 30, 2018.
23. The sales information presented to the Commission does not demonstrate that the actual value of the Subject Properties is less than the assessed value of the Subject Properties.
24. The Taxpayer alleged that the assessed value of the Subject Properties was not equalized with the assessed values of comparable properties.
25. The Taxpayer presented information from the assessor's web site for two lots located on Quail Ridge Circle that were each assessed at \$70,000 for tax year 2017. The information from the assessor's web site indicates that these lots were slightly smaller than the Subject Properties and each had a land attribute of Good 15 applied.
26. The Taxpayer presented information from the assessor's web site for a lot located one lot away from the Subject Property on Riverside Drive that was assessed at \$31,000 for tax year 2017. The information from the assessor's web site indicates that this property is slightly larger than the Subject Properties but has a land attribute of Good 1.8 applied to it. Maps presented by the County Board indicate that this property is located on the river, has limited street frontage, and may have limited buildable space due to its unusual shape and proximity to the river.
27. The County Board presented the Property Record File for the Subject Properties, which demonstrated that there were no land attribute factors applied to the Subject Properties.
28. The Taxpayer did not present the Property Record Files for the parcels that she alleged were comparable to the Subject Property. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the features of these other properties or the impact of the land attribute factors applied to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.⁹
29. 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.
30. 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.

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.*

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 are affirmed.
2. The taxable value of the Subject Property in Case No. 17R 0403 for tax year 2017 is \$64,300.
3. The taxable value of the Subject Property in Case No. 17R 0404 for tax year 2017 is \$63,200.
4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2017.
8. This Decision and Order is effective on February 26, 2020.

Signed and Sealed: February 26, 2020

Steven A. Keetle, Commissioner