

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dean D. Willson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0416

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

Background

1. The Subject Property is a residential property improved with a 2,582 square foot two story residence, with a legal description of: Huntington Park, Lot 268, Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$338,300 for tax year 2017.
3. Dean D. Willson, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$284,020 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$338,300 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 10, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Dean D. Willson was 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 assessed value of the Subject Property for the 2017 tax year was too high as demonstrated by the 2016 and 2019 assessed values.
17. The Taxpayer presented the 2019 Property Record File (PRF) for the Subject Property.
18. The County Board presented the 2017 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 for tax year 2017, including the Subject Property, to support the 2017 per square foot assessed values of the Subject Property and the other properties presented.
19. The 2017 and 2019 PRF for the Subject Property indicate that the valuation models utilized by the County Assessor were different in 2016, 2017, and 2019. The PRF for both 2017 and 2019 each contain a cost detail which shows different factors and different values being applied for each of the separate tax years.

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).

20. 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 For this same reason, the Commission also finds that a subsequent year's assessment is not relevant to the prior year's valuation.
21. The Taxpayer alleged that the Subject Property was assessed at a higher per square foot amount than four other comparable properties located in the same neighborhood as the Subject Property and that therefore its value was not equalized with other comparable properties.
22. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
23. "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."¹²
24. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the amount of the contribution to value of the various amenities or features of the other properties presented by the Taxpayer, such as size, quality, condition, basement size and finish, etc.¹³
25. The Taxpayer presented information from the County Assessor's web site regarding 2018 or 2019 assessments of the other properties discussed rather than the 2017 tax year that is at issue in this appeal. In addition to being information for different tax years, this web site information does not indicate the contribution to value of the various amenities or features of the other properties.
26. The Commission is unable to find and determine that the other properties presented by the Taxpayer are comparable to the Subject Property or any adjustments that may be made to account for differences between them and the Subject Property to make them comparable based on the information presented to the Commission. The Commission is therefore unable to determine that the per square foot assessed value of the Subject Property is not equalized with other comparable properties.

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).

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 22, 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.*

27. The Taxpayer alleged that the quality and condition ratings of the Subject Property were higher than the actual quality and condition of the Subject Property for the 2017 tax year and that the assessed value of the Subject Property was therefore too high.
28. The Taxpayer discussed various aspects of the condition of the Subject Property such as the condition of the roof, concrete, deck, and wood floors, as well as the Subject Properties needing to have all but one or two of its windows replaced. The Taxpayer stated that the quality and condition of the Subject Property were the same in 2017 and 2019.
29. The Taxpayer did not produce evidence to demonstrate that the condition rating of “average” determined by the County Assessor for the Subject Property and used to determine the assessed value for the 2017 assessment year was arbitrary, unreasonable, or incorrect.
30. The Taxpayer did not provide information regarding the cost to correct these conditions or to otherwise quantify their impact on the value of the Subject Property.
31. The PRF for the 2019 assessment year shows that the County Assessor reappraised the Subject Property for the 2019 assessment year and the quality rating was lowered from very good to good, but that the condition rating remained unchanged from 2017.
32. The Taxpayer has presented information to demonstrate that the quality rating of the Subject Property for tax year 2017 should be good rather than very good; however, that alone is not sufficient to allow the Commission to grant the Taxpayer relief.
33. The Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.¹⁴
34. As indicated previously when discussing the equalized value of the Subject Property, the information presented in this appeal causes the Commission to be unable to quantify the impact of any change in the quality or condition rating of the Subject Property for tax year 2017.
35. The only information presented showing the quantification of a quality rating of good on a property in an assessment model is the PRF of the Subject Property for the 2019 tax year. As previously stated, the County Assessor utilized a different valuation model for the 2019 assessment than was used for the 2017 assessment, which would not allow the Commission to quantify the value difference caused by a change in quality rating for the 2017 tax year.
36. Additionally, without the PRFs for the other properties presented, the Commission is unable to determine what their quality or condition ratings were for tax year 2017, and what, if any, impact on the valuation model of the County Assessor those ratings may have had on their assessments. The Commission cannot otherwise determine how a change in the quality rating of the Subject Property for the 2017 tax year would have on its assessed value for tax year 2017.

¹⁴ *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

37. 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.
38. The Taxpayer has not adduced clear and convincing evidence that the value resulting from 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	\$ 69,600
<u>Improvements</u>	<u>\$268,700</u>
Total	\$338,300

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 15, 2020.

Signed and Sealed: December 15, 2020

Steven A. Keetle, Commissioner