

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Diana M. Whitman,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0439 & 18R 0283

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 1,610 square foot ranch style residence, with a legal description of: Balla Machree, Lot 34 Block 0 128 X 170, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$182,300 for tax year 2017.
3. Diana M. Whitman (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$110,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$182,300 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$182,300 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$110,500 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$182,300 for tax year 2017.
8. The Taxpayer appealed the determination 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, Nebraska, before Commissioner Steven A. Keetle.
10. Diana M. Whitman 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 Taxpayer alleged that the assessed value of the Subject Property changed too drastically from tax year 2016 to 2017.
20. The County Board presented the Property Record File (PRF) for the Subject Property for each of the tax years at issue. The PRFs indicate that for the 2017 tax year the County Assessor preformed a land valuation study and changed the value of the land component of many residential parcels in the county.

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).

21. 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
22. The Taxpayer asserts that the assessed value of the Subject Property is too high based on the recent sales of nearby comparable properties.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
24. "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
25. The Taxpayer did not present the PRFs for the parcels that she alleged were comparable to the Subject Property. Without the details contained in the PRFs, the Commission is unable to determine the contributions to value of the various characteristics, amenities or features of these other properties to determine if the improvements are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹³
26. The information presented regarding the recently sold properties indicates that the values of the land component for these properties are lower than that of the Subject Property due to their location directly abutting Pacific Street, a major east-west road.
27. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the improvements. The home on the Subject Property is a flat roofed ranch property built in 1952. The Taxpayer indicated that the Subject Property has its original windows, needs a new roof, has a cracked driveway, and has original 1950s bathrooms.
28. The PRF indicates that the County Assessor's office inspected the Subject Property prior to the 2017 tax year assessment and lowered the condition rating for the Subject Property from average to fair based on the inspection, which reflected the conditions indicated by the Taxpayer.
29. The Taxpayer alleged that the proximity of rental properties to the Subject Property had a negative impact on the value of the Subject Property.
30. The Taxpayer did not present any information that would allow the Commission to quantify the impact of nearby rental properties on the value of the Subject Property.

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 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.*

31. 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.
32. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board were arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is:

Land	\$103,400
<u>Improvements</u>	<u>\$ 78,900</u>
Total	\$182,300

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 years 2017 and 2018.
7. This Decision and Order is effective on February 11, 2020.

Signed and Sealed: February 11, 2020

Steven A. Keetle, Commissioner