

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael L. Daly,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0452

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 2,430 square foot ranch style residence, with a legal description of: Lands Sec-Twn-Rge 19-15-11, Irreg N 525 S 1428 W 818 ft E ½ SE ¼ & S 15 N 1154.2 W 446.44 E 479.44 Ft & S 435.73 N 1042.89 W 20 E 604.44 Ft for Private Access Rd NE ¼ SE ¼ Sec 19 15 11, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$913,800 for tax year 2017.
3. Michael L. Daly, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$412,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$913,800 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 11, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Michael L. Daly and Michaela A. Daly were 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

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 information presented indicates that that after the protest to the County Board and prior to the filing of this appeal, the application for special valuation status for the Subject Property was granted by the County Assessor and that this determination would result in a land valuation of \$135,420 for tax year 2017. The parties agree that this should be the value of the land component for the 2017 tax year.
17. The Taxpayers alleged that the value of the Subject Property should be reduced to be equalized with other properties in the area.
18. The information presented by the Taxpayer regarding the other properties in the area was minimal but what was presented indicated that the Subject Property was unique for the area and not comparable to the other properties discussed.
19. The Taxpayers alleged that the value of the Subject Property was too high based on the condition of the residence located on the Subject Property.

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).

20. The Taxpayers discussed the history of the construction of the Subject Property. The Taxpayers discussed the condition of the Subject Property and presented pictures of the interior of the Subject Property. The Taxpayer did not present information regarding the cost to cure or repair the items discussed or otherwise quantify the impact of the items relating to the condition of the Subject Property.
21. The County Board presented the Property Record File (PRF) for the Subject Property as well as a spreadsheet of 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.
22. The County Appraiser indicated that based on the discussion and the information provided by the Taxpayer regarding the condition of the residence on the Subject Property, as well as the PRF, that the condition rating should be reduced to average from good. The County Appraiser stated that this would reduce the value of the improvements by \$46,980, and that based on that reduction, his opinion of value for the improvements on the Subject Property would be \$422,820, for tax year 2017.
23. The Commission finds and determines that the value of the improvements on the Subject Property for tax year 2017 is \$422,820, which when added to the land value of \$135,420 would result in a total assessed value of \$558,240.
24. 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.
25. 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	\$135,420
<u>Improvements</u>	<u>\$422,820</u>
Total	\$558,240

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