

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Facilities Cost Management Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0507 & 18R 0359

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 1,458 square foot ranch style property, with a legal description of: Rockbrook Woods, Lot 3 Block 0, Irreg., .323 AC, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$164,500 for tax year 2017.
3. Facilities Cost Management Group, LLC, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$151,700 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$164,500 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$179,600 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$126,400 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$179,600 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 November 6, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
10. Merle W. Rambo was present at the hearing for the Taxpayer.
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 value of the land component was too high based on the per square foot values of other properties in the area.
20. The Taxpayer provided selected information regarding per square foot values for other parcels of property in the area.
21. The Taxpayer did not present the PRFs for the parcels that he alleged were comparable to the Subject Property. Without the details contained in the PRF, the Commission is unable to determine the characteristics of these properties. Nor can the Commission determine the contributions to value of the features of these other properties to determine if they are

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).

comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.⁹

22. The Taxpayer alleged that the assessed value of the improvements on the Subject Property was too high as it did not take into account the condition of the Subject Property.
23. The Taxpayer presented multiple photographs of the interior and exterior of the residence located on the Subject Property and discussed the condition of the Subject Property.
24. The County Board presented the 2017 and 2018 Property Record Files (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 and 2018, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
25. The County Appraiser indicated that after reviewing all of the information presented at the hearing regarding the land component and condition of the Subject Property, including the PRFs and the sales in the economic area of the Subject Property for both tax years, his opinion would be that the County Assessor's condition rating of the improvements on the Subject Property did not account for the actual condition of the Subject Property and that the assessed value of the improvements should be lowered to \$89,900 for tax years 2017 and 2018. When added to the land valuation of \$58,500, this would result in a total assessed value of \$148,400 both tax years 2017 and 2018.
26. The Commission finds and determines, based on the information presented at the hearing, that the value of the improvements on the Subject Property for tax years 2017 and 2018 is \$89,900 and the value of the land component is \$58,500, resulting in a total assessed value of \$148,400 for tax years 2017 and 2018.
27. 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.
28. The Taxpayer has 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 vacated.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 6, 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.*

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 vacated and reversed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is:

Land	\$ 58,500
<u>Improvements</u>	<u>\$ 89,900</u>
Total	\$148,400

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 January 8, 2021.

Signed and Sealed: January 8, 2021

Steven A. Keetle, Commissioner