

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Constance A. Royal et al. Trust,
Constance A. Royal, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0511

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 4,484 square foot two story residence, with a legal description of: Candlewood Lot 94 Block 0 85.79 X 185, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$592,300 for tax year 2017.
3. Constance A. Royal (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$497,900 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$592,300 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 August 22, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Constance A. Royal, Bob Royal, Tom Simmons, and Jason Rich were present at the hearing for the Taxpayer.
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 Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² 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

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

1. The Taxpayer alleged that the assessed value of the Subject Property was greater than its actual value and that the assessed value of the Subject Property was not equalized with other comparable properties on a per square foot basis.
2. The Taxpayer presented two properties which recently sold in the same neighborhood as the Subject Property and alleged that their sale prices demonstrated the market value of the Subject Property.
3. The Taxpayer presented three properties located in the same neighborhood as the Subject Property which were assessed at lower amounts per square foot than the Subject Property to demonstrate a lack of equalization with other comparable properties.
4. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹

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).

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

5. “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.”¹⁰
6. The County Board presented the Property Record File (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, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
7. The Taxpayer did not present the PRF for any of the properties presented for valuation or equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as type of construction, size, quality, condition, basement finish, etc.¹¹
8. The Taxpayer produced information from the County Assessor’s web site regarding each of the five properties.
9. The Subject Property has a higher quality rating than all but one of the five other properties presented.
10. The Commission finds and determines that the four properties presented by the Taxpayer with a lower quality rating than the Subject Property are not comparable to the Subject Property.
11. The differences in assessed value between the Subject Property and the remaining sold property are due to differences in their characteristics such as finished basement square footage, fixtures, brick veneer, etc.
12. Real estate broker Tom Simmons (the Broker) discussed the value of the Subject Property and the real estate market in the area of the Subject Property.
13. The Broker stated that there was a ceiling to the sales prices of residential properties in the area and there had not been a sale for more than \$525,000.
14. The list of valid sales presented by the County Board shows that there was a sale of a smaller ranch style property in the same neighborhood as the Subject Property for \$550,000.
15. The Broker did not present an opinion of value for the Subject Property but rather a range of values somewhere between \$521,315.52 and \$506,807.52.
16. The Broker utilized two sales of properties in the area of the Subject Property that he felt were comparable to the Subject Property (the Broker Sales) to illustrate that the assessed value of the Subject Property was higher than market value.

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 2, 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.*

17. The Taxpayer did not present the PRF for the Broker Sales but did present real estate sales listing information and photographs of each of the sold properties.
18. The first Broker Sale occurred in November 2016, prior to the assessment date, and was included on the County Board's list of sales. The second Broker Sale property sold in March 2017, after the assessment date and the sales period considered by the County Assessor when determining assessed values for 2017.
19. The Broker made just three adjustments to the two Broker Sales. One adjustment was made to both of the Broker Sales to account for swimming pools. Two more adjustments were made to the more recent sale to account for a difference in condition and a third garage stall. The Broker stated that these adjustments accounted for all of the differences between the Subject Property and the Broker Sales such as size and amenities such as patios, decks, and finished basement area. The Broker also attributed a larger amount of value to the land component and separated that value out when determining the value range for the Subject Property.
20. 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.
21. The Taxpayer has not 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 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	\$ 93,300
<u>Improvements</u>	<u>\$499,000</u>
Total	\$592,300

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 October 7, 2020.

Signed and Sealed: October 7, 2020

Steven A. Keetle, Commissioner