

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Scott W. Bloemer et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0526

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 1,948 square foot one story townhouse, with a legal description of: Casita Villa Lot 1 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$180,400 for tax year 2017.
3. Scott W. Bloemer et al., (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$166,300 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$180,400 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 27, 2018, at Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Scott W. Bloemer, Managing Member, was 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 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 per square foot assessed value of the Subject Property was not equalized with a comparable property.
17. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
18. The Taxpayer presented the Property Record File (PRF) of properties located near the Subject Property.
19. Along with the PRF’s the Taxpayer offered a chart that made adjustments to the assessed values of the comparable properties to adjust for differences in the characteristics of the properties. The Taxpayer stated that these adjustments were based on the Taxpayer’s experience in the real estate market and the information contained in the PRF’s.
20. The County Board presented information regarding all of 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 those areas, including the Subject

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).

Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.

21. The PRFs presented demonstrate that the differences in per square foot assessments between the Subject Property and the other properties presented were due to differences in the characteristics of the properties such as condition, style of construction, basement finish, fireplace, deck type and size, etc.
22. Based on the information presented, the County Appraiser indicated that the square footage of the Subject Property should be reduced to 1,948 for the above ground square footage and the amount of central heating and air conditioning in the market calculation detail.
23. The County Appraiser, after reviewing the information presented at the hearing, as well as the information contained in the PRF for the Subject Property, stated that his opinion of value for the Subject Property as of the assessment date was \$176,600.
24. In addition to the reduction in the square footage of the above ground living area and the amount of central heating and air conditioning in the market calculation detail, the Commission finds that the market calculation detail adds a factor for a condition rating of Good that should be removed to reflect the Subject Property's condition rating of Average.
25. The Commission finds and determines that the taxable value of the Subject Property for tax year 2017 is \$168,300.¹⁰
26. 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.
27. 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	\$ 35,500
<u>Improvements</u>	<u>\$132,800</u>
Total	\$168,300

¹⁰ \$85,712 (above ground square footage 1,948 sq. ft. x \$44) SF + \$10,714 (unfinished basement square footage 1,948 sq. ft. x \$5.5) + \$11,000 (baths) + \$3,850 (masonry fireplace) + \$1,617 (sunroom) + \$13,464 (attached garage) + \$21,502 (basement sq. ft.) + \$7,700 (basement finish) + \$20,000 (Constant) - \$9,500 (market age) = \$166,059. \$166,059 x .80 (neighborhood adjustment) = \$132,847 rounded to \$132,800. \$132,800 improvements + \$35,500 land = \$168,300 total assessed value.

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 January 17, 2020.

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner