

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Edward P. Gonzales et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0584

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 2,578 square foot two story residence, with a legal description of: Linden Park, Lot 19 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$378,400 for tax year 2017.
3. Edward P. Gonzales et al. (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of 327,054.18 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$368,400 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 12, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle
7. Dana Gonzales 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 both the land and improvement components of the Subject Property were overvalued and should be valued at the average of five other properties presented.
17. The Taxpayer’s requested value was determined by averaging the assessed values of the land component and improvement components other properties, and then applying the averaged per square foot values to the Subject Property’s land and improvement components. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.⁹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal method would have to be produced. No evidence has been presented to the Commission that the Taxpayer’s approach is a professionally accepted mass or fee appraisal approach.
18. “Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by

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, Neb. Rev. Stat. § 77-112 (Reissue 2018).

the size of the total adjustments and the reliability of the data and methods used to support the adjustments[.]”¹⁰

19. The Taxpayer alleged that the land component of the Subject Property is overvalued because it has a higher per square foot value than the other properties presented.
20. The Taxpayer presented information regarding the size and assessed value of the land component of the Subject Property and five other lots on the same street. The information presented indicates that the Subject Property has the highest per square foot value for the land component of all six of the properties. This same information also demonstrates that the Subject Property is the smallest parcel and has the smallest land component value. Additionally, as the size of the land components increases, the value of the land component increases proportionally and the per square foot value decreases.
21. Professionally accepted appraisal practice holds that “[a] given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land.”¹¹
22. Additionally, “[s]ize differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”¹²
23. The valuations of the land components of the properties presented by the Taxpayer are proportionate and consistent with professionally accepted appraisal techniques.
24. The Taxpayer alleges that the value of the land component of the Subject Property is negatively impacted by a “drainage ravine” that runs through the Subject Property.
25. The Taxpayer did not present information regarding the impact of the drainage ravine on the value of the land component of the Subject Property, or any water damage caused to the land component of, or the improvements on, the Subject Property by the drainage ravine. The Commission is unable to quantify any impact of this characteristic of the land component on its value based on the information presented.
26. The Taxpayer alleges that the assessed value of the Subject Property is not equalized with the assessed value of other comparable properties. The Taxpayer alleged that five other two story homes of approximately the same age located near the Subject Property were all built by the same builder and therefore were comparable.

¹⁰ The Appraisal of Real Estate, Appraisal Institute, at 308 (13th ed. 2008).

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

¹² Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
28. “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.”¹⁴
29. 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 for tax year 2017, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
30. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to quantify the amount of the contribution to value of the various amenities or features of the other properties presented by the Taxpayer, such as size, quality, condition, basement size and finish, etc.¹⁵
31. The Taxpayer did produce information from the County Assessor’s web site that contains some information regarding the properties presented as comparables.
32. The information from the County Assessor’s web site indicates that differences in the assessed values of the properties presented is due to differences in their characteristics.
33. For example, the property presented by the Taxpayer that has a higher per square foot value than the Subject Property is the only property with a higher quality rating than the Subject Property. There are two other properties that have the same quality rating as the Subject Property, but they both have lower condition ratings and lower per square foot values than the Subject Property. Additionally, differences in characteristics such as basement size, finished basement square footage, garage size, etc. between the properties presented and the Subject Property appear to account for the differences in assessed values.
34. 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.

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 22, 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.*

35. 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	\$128,100
<u>Improvements</u>	<u>\$240,300</u>
Total	\$368,400

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 year 2017.
7. This Decision and Order is effective on December 28, 2020.

Signed and Sealed: December 28, 2020

Steven A. Keetle, Commissioner