

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harry C. Sorensen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0599

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 1,642 square foot ranch style residence, with a legal description of: Twilight Hills Lot 1 Block 1 Irreg., Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$281,500 for tax year 2017.
3. Harry C. Sorensen (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$198,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$281,500 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 Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle.
7. Carol L. Sorensen 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

1. The Taxpayer alleged that the increase in the assessed value from the prior year’s assessment, particularly the increase in the improvement value, is unreasonable and arbitrary.
2. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰ The Commission notes that the value of the Subject Property hadn’t changed for seven years prior to the 2017 assessment year.
3. The Taxpayer alleged that a general negative public view of the communal residential and retreat use of a nearby property reduced the value of the Subject Property.
4. The Taxpayer presented no information to allow the Commission to quantify any impact of the use of nearby properties on the value of the Subject Property.

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, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

5. The Taxpayer alleged that the value of the Subject Property should be reduced due to modifications made to the Subject Property and its condition.
6. The Taxpayer described modifications made to the Subject Property by the Taxpayers themselves including ramps and railings. The Taxpayer described the condition of the Subject Property including the basement plumbing, windows, and wood deck.
7. 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 2017 per square foot assessed values of the Subject Property and the other properties presented.
8. The County Appraiser indicated that after reviewing all of the information presented at the hearing regarding the Subject Property, including the PRF and the sales in the economic area of the Subject Property, his opinion would be that the condition rating of the Subject Property should be changed to fair and the value attributed to wood deck should be removed. Based on the information reviewed in the hearing, taking these actions would reduce the value of the improvement component of the Subject Property by \$31,500 for tax year 2017.
9. The Commission finds and determines that the assessed value of the Subject Property for tax year is \$31,600 attributed to the land component and \$218,400 attributed to the improvements resulting in a total assessed valuation of \$250,000 for tax year 2017.
10. 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.
11. 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	\$ 31,600
<u>Improvements</u>	<u>\$218,400</u>
Total	\$250,000

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