

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kirk D. Eckert,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0638

Decision and Order Reversing the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel improved with a 2,504 square foot one and one-half story residence, with a legal description of: Lands Sec-Twn-Rge 23-16-09 –Ex N 16.5 ft & W 7 ft & Irr E 363.77 N 692.16- NW ¼ SE ¼, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$387,520 for tax year 2017.
3. Kirk D. Eckert (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$215,319 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$387,500 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 November 6, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska before Commissioner Steven Keetle
7. Kirk D. Eckert was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) and Renee Blackwell of the Douglas County Assessor/Register of Deeds Office were 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 Subject Property is an agricultural parcel subject to special valuation. The Taxpayer did not dispute the County Board valuation of the land component of the Subject Property.
17. The Taxpayer alleges that the increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary, and he further alleged that the increase in assessed value was greater than other properties in the neighborhood.
18. 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 For this same reason, the Commission finds that a subsequent year’s assessment is not relevant to the prior year’s valuation. Additionally, the differences in the changes to the assessed value of the Subject Property and other properties in the neighborhood are only relevant to the current year’s assessment if the

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).

differences in those changes resulted in values that were not equalized for the current assessment year.

19. The Taxpayer alleged that the quality and condition ratings for the Subject Property as determined by the County Assessor's office overstated the quality and condition of the Subject Property.
20. The Taxpayer offered photographs of the Subject Property and discussed its construction and its condition as of the assessment date as well as sales of other properties in the area of the Subject Property.
21. The Taxpayer presented an appraisal report for the Subject Property prepared by an independent appraiser according to professional standards that determined a value for the improvements located on the Subject Property of \$214,100 as of August 21, 2017.
22. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹¹
23. The County Board presented the Property Record File (PRF) for the Subject Property.
24. The Appraisal report indicates that the Subject Property is a unique property and accounts for its location, condition, amenities and outbuildings when arriving at its determination of value for the improvements.
25. The Commission finds that the appraisal report constitutes competent evidence to rebut the presumption in favor of the County Board's determination. When the appraisal report and other evidence presented to the Commission are taken together, this constitutes clear and convincing evidence that the County Board's determination was unreasonable.
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:

¹¹ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

Land	\$ 86,520
<u>Improvements</u>	<u>\$214,100</u>
Total	\$300,620

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 8, 2021.

Signed and Sealed: January 8, 2021

Steven A. Keetle, Commissioner