

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Fred W. Tonack,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0098 & 18R 0099

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

Background

1. The Subject Property in Case No. 18R 0098 is an agricultural parcel improved with a 1,498 square foot ranch style residence and outbuildings, with a legal description of: Lands Sec-Twn-Rge 20-16-12 Irreg S 635.01 W 652.7 Ft NE ¼ SW ¼ 9.51AC, Douglas County, Nebraska.
2. The Subject Property in Case No. 18R 0099 is an agricultural parcel improved with a 2,356 square foot one and one-half story finished residence and outbuildings, with a legal description of: Lands Sec-Twn-Rge 20-16-12 –Ex RD & RR RWY & Irreg S 635.01 W 652.7 Ft- NE ¼ SW ¼ 24.96 AC, Douglas County, Nebraska
3. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No 18R 0098 at \$233,510 for tax year 2018.
4. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$174,334 for tax year 2018.
5. The County Board determined that the taxable value of the Subject Property in Case No. 18R 0098 was \$233,510 for tax year 2018.
6. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No 18R 0099 at \$309,880 for tax year 2018.
7. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$148,764 for tax year 2018.
8. The County Board determined that the taxable value of the Subject Property in Case No 18R 0099 was \$309,880 for tax year 2018.
9. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on November 8, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, NE, before Commissioner Steven Keetle.
11. Fred W. Tonack and Dean Tonack were present at the hearing.
12. Larry Thomsen, Senior Appraiser: Residential, Stan Mlotek, Real Estate Specialist, and Matt Holly of the Douglas County Assessor/Register of Deeds Office were present for the County Board.

Applicable Law

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
14. The Commission's review of a determination of the County Board of Equalization is de novo.²
15. 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
16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
18. 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
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

20. The Taxpayer alleged that the average per acre value of the land components of the Subject Properties were higher than and not equalized with average per acre values of the land components of other properties in the area.

¹ 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).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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. County 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).

21. The County Board presented the 2018 Property Record File (PRF) for both of the Subject Properties. The PRFs contain information regarding the assessment of agricultural and horticultural land and special valuation for agricultural and horticultural land.
22. Agricultural land in Nebraska is classified into Land Capability Groups (LCGs) based on the use and productivity of the land, with productivity being determined by soil type.⁹ Agricultural parcels typically contain several different LCGs with different per acre values.
23. The PRFs indicate that the Subject Property in Case No. 18R 0098 has per acre land values ranging from \$32,000 per acre (non-agricultural homesite) to \$4,100 per acre (4d1 LCG, subclass 8157) and the Subject Property in Case No. 18R 0099 as per acre land values ranging from \$32,000 per acre (non-agricultural homesite) to \$39 per acre (agricultural waste).
24. The wide range of per acre values demonstrate that simply averaging the per acre value of different properties to come up with an assessed value would not account for the differences between the properties and would not reflect equalized actual or special values for any of the properties presented including the Subject Properties.
25. The Taxpayer presented information for five properties near the Subject Property from the County Assessor's web site which shows the total land values but not the per acre values for each of these properties.
26. The Taxpayer did not present the PRF for any of the five properties presented to demonstrate land values. Without the details contained in the PRF, the Commission is unable to determine the LCGs of agricultural or horticultural land on the other properties or the basis for the total land valuations of these properties.¹⁰
27. The Taxpayer did not present information to demonstrate that the per acre land values of the Subject Properties were not equalized with other comparable properties.
28. The Taxpayer alleged that the value of the improvements on the Subject Property in Case No 18R 0099 were not equalized with other comparable properties and that the condition of the improvements as determined by the County Assessor's office were incorrect.
29. The Taxpayer presented pictures of the one and one-half story farmhouse located on the Subject Property in Case No 18R 0099 which show damage to portions of the interior and exterior of the structure. The pictures were taken at night with flashlights and the Taxpayer stated that at the time the picture were taken the power to the property was disconnected. The Taxpayer stated that the pictures were taken some time after the farmhouse on Subject Property in Case No 18R 0099 had been abandoned by its occupant sometime in May 2018.

⁹ See 350 Neb. Admin. Code, Ch. 14 § 004.08 *et seq.*

¹⁰ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 16, 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.*

30. The Taxpayer did not demonstrate the condition of the improvements located on the Subject Property in Case No 18R 0099 as determined by the County Assessor as of the January 1, 2018, assessment date were arbitrary, unreasonable or incorrect.
31. One of the five properties near the Subject Property presented by the Taxpayer had improvements and the Taxpayer presented information from the County Assessor's web site for this property.
32. The Taxpayer did not present the PRF for the other improved property to demonstrate improvement values. 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 improvements on the properties such as style of construction, quality, condition, age, outbuildings, etc.
33. The Taxpayer did not present information to demonstrate that the value of the improvements located on the Subject Property in Case No. 18R 0099 were not equalized with other comparable properties.
34. 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.
35. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2018 are affirmed.
2. The taxable value of the Subject Property in Case No. 18R 0098 for tax year 2018 is:

Land	\$ 79,410
<u>Improvements</u>	<u>\$154,100</u>
Total	\$233,510

3. The taxable value of the Subject Property in Case No. 18R 0099 for tax year 2018 is:

Land	\$144,580
<u>Improvements</u>	<u>\$165,300</u>
Total	\$309,880

4. 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).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2018.
8. This Decision and Order is effective on February 3, 2021.

Signed and Sealed: February 3, 2021

Steven A. Keetle, Commissioner