

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paul J. Kramper,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 646

Decision and Order Affirming the Douglas
County Board of Equalization
and Correcting Caption

Background

1. The Subject Property is a 2,952 square foot residential property with a legal description of: Fairacres Add, Lot 69 Block 0, S 67.17 W 207.5 ft Lt 68 & N 50 W 202.9 ft 117.17 X 205.1 ft, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$717,400 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$644,500 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$717,400 for tax year 2014.
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 July 6, 2016, at the Omaha State Office Building, 1313 Farnam St, Conference Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Paul J. and Michaela Kramper were present at the hearing (the Taxpayer).
8. Larry Thomsen, Senior Residential Appraiser for the Douglas County Assessor's Office, 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 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *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 Subject Property should be located in a different neighborhood or market area than the Fairacres neighborhood.
17. The Taxpayer did not provide evidence to demonstrate that the County’s determination of the boundaries of neighborhoods or market areas of residential property for assessment purposes was unreasonable or arbitrary.
18. The Taxpayer alleged that the assessed value of homes with sales prices similar to the Subject Property’s sale price were higher in the Fairacres neighborhood than in other neighborhoods.
19. The information provided to support this allegation does not contain sufficient information about the comparability of the properties that the Taxpayer looked at for the Commission to sufficiently review or grant relief regarding this allegation.
20. The Taxpayer alleged that the value of the land component of the Subject Property is assessed too high.

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

21. The Taxpayer provided general information indicating that the per square foot land valuations were lower in other neighborhoods than Fairacres.
22. While the Taxpayer's presentation does show a difference in per square foot lot values between different areas, there is not enough information regarding the differences to demonstrate that the determination of neighborhood lot values utilized by the County is unreasonable or arbitrary.
23. The Taxpayer alleged that the land value of the Subject Property should be reduced for its proximity to a church and proximity to Dodge Street, but provided no quantification of the impact of those factors on the land value of the Subject Property.
24. The Taxpayer alleged that the difference in lot values between the Subject Property and a property located very near the Subject Property was unequal, however without the property record file for this nearby property there was not sufficient evidence for the Commission to determine if the difference was unreasonable or arbitrary.
25. The Taxpayer alleged that the Subject Property was assessed at a higher value than comparable properties.
26. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
27. The Taxpayer presented separate analyses of: properties with similar Condition ratings; properties with similar Quality ratings; and properties with similar sale prices to the Subject Property.
28. Only three property record files of properties that the Taxpayer alleged were comparable to the Subject Property were presented. Based on a review of these property record files, the differences in the value of assessment unit factors applied to the Subject Property and the alleged comparables appears to be accounted for in differences in characteristics of the properties. (i.e. story height, quality of basement finish, etc.).
29. The Taxpayer suggests that the value of the Subject Property be adjusted to a percentage of his purchase price to reflect the assessment to sales ratios for all properties sold in 2012 and 2013 for amounts between \$600,000 and \$850,000.
30. This suggested valuation method does not account for differences in characteristics between the Subject Property and the other properties such as Quality, Condition, Neighborhood, etc.
31. 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.
32. 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.

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

ORDER

IT IS ORDERED THAT:

1. The caption of this appeal is corrected to reflect the proper spelling of the Appellant's name as shown in the caption above.
2. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is Affirmed.
3. The taxable value of the Subject Property for tax year 2014 is:

Land	\$180,600
<u>Improvements</u>	<u>\$536,800</u>
Total	\$717,400

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 (2014 Cum. Supp.).
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 2014.
8. This Decision and Order is effective on September 16, 2016.

Signed and Sealed: September 16, 2016.

Steven A. Keetle, Commissioner