

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert J. Mendez,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0231

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

Background

1. The Subject Property is a residential parcel located at 18712 Van Camp Drive improved with a 3,023 square foot two story house with a legal description of: West Bay Springs Lot 81 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$313,400 for tax year 2016.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$292,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$313,400 for tax year 2016.
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 18, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor Room E, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Robert J. Mendez (Taxpayer) was present at the hearing.
8. Larry Thomsen, Senior Residential Appraiser for the Douglas County Assessor/Register of Deeds 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) (2016 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

1. The Taxpayer alleged that the assessed value of the Subject Property was too high in relation to other comparable properties.
2. The Taxpayer presented the Property Record Files (PRFs) for the Subject Property as well as two properties located on the same street as the Subject Property that had lower assessed values for tax year 2016.
3. The Subject Property and these two properties are all two story residential properties with condition and quality ratings of good and all three properties have the same lot value.
4. Taxpayer’s first comparable property, located at 18718 Van Camp Drive, has approximately 600 fewer square feet of above ground living area, a smaller basement, and a smaller garage than the Subject Property.
5. Taxpayer’s second comparable property, located at 18702 Van Camp Drive, has approximately 300 fewer square feet of above ground living area, a smaller basement, and a smaller garage than the Subject Property.

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) (2016 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) (2016 Cum. Supp.).

6. Additionally, the PRFs show that the County used a lower cost per square foot for the above ground living area, basement, and garage for the Subject Property than the costs per square foot for either of the Taxpayer's two comparables when determining assessed values.
7. The Commission finds that the differences in the assessed value of the Subject Property and the Taxpayer's comparables are accounted for in differences in the characteristics of the properties.
8. 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.
9. 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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 40,500
<u>Improvements</u>	<u>\$272,900</u>
Total	\$313,400

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 (2016 Cum. Supp.).
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 2016.
7. This Decision and Order is effective on December 13, 2017.

Signed and Sealed: December 13, 2017.

Steven A. Keetle, Commissioner