

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jshon J. Breeling,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0361

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

Background

1. The Subject Property is 1,889 square foot ranch style residential property, with a legal description of: Arbor Ridge 2nd Add Rep 1 Lot 27 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$326,100 for tax year 2016.
3. Jshon J. Breeling (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$299,364 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$326,100 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 August 16, 2018, at the Omaha State Office Bulidng, 1313 Farnam, Rm 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
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 Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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

16. The Taxpayer alleges that the assessed value of the Subject Property is too high when compared to other properties located near the Subject Property.
17. The County Board presented the Property Record File (PRF) for the Subject Property which sets forth the factors used to determine its assessed value.
18. The Taxpayer offered information indicating that the Subject Property had an additional 134 square feet of garage area than listed on the PRF, which would reduce the amount of above ground living area by 134 square feet as well as reduce the basement area by 134 square feet.⁹
19. Using the \$/Unit factors listed on the PRF and the correct square footage of the garage, living space, and basement would reduce the assessed value of the improvement on the Subject Property by \$11,652 to \$280,932, which, when added to the land value of \$33,500, would result in a total assessed value of \$314,432.¹⁰

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. 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) (2016 Cum. Supp.).

⁹ Building sq. ft. now 1755, Attached Garage sq. ft. 961, Basement Conc 9 ft. sq. ft. now 1755.

¹⁰ Total RCN w/o Add ons \$319,816 + \$1,026 Add Ons = \$320,842 RCN with Add ons. 2.71% physical depreciation = \$8,695 (\$320,842 * 2.71% = \$8,695). \$320,842 Total RCN - \$8,695 physical depreciation = \$312,147. \$312,147 * 0.90 Neighborhood Adjustment = \$280,932 RCNLD.

20. The Taxpayer presented some information regarding properties that recently sold, however the Taxpayer did not provide any of the Property Record Files (PRF) to demonstrate all of the characteristics of the sold properties and determine their comparability to the Subject Property.
21. As demonstrated with the above review of the Subject Property, differences in characteristics or amenities in a property, such as the amount of above ground living space, basement area, and garage area, can make a significant difference in the actual value of a property and its comparability to the Subject Property for equalization analysis purposes.
22. 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.
23. 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 2016, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 33,500
<u>Improvements</u>	<u>\$280,932</u>
Total	\$314,432

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 27, 2018.

Signed and Sealed: December 27, 2018

Steven A. Keetle, Commissioner