

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dwight W. Clark,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0065 & 18R 0197

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

Background

1. The Subject Property is a residential parcel improved with a 4,013 square foot two story residence, with a legal description of: Ranch View Estates 2 lot 78 Block 0 93 X 185, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$536,100 for tax year 2017.
3. Dwight W. Clark (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$458,200 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$536,100 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$536,100 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$458,200 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$536,100 for tax year 2018.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on March 12, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Dwight W. Clark was present at the hearing.
11. 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

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

¹ See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

13. The Commission’s review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Subject Property is a 0.38 acre residential lot improved with a 4,013 square foot two story home that was constructed in 2010. The Subject Property has a quality of construction rating of good+ and has a condition rating of good for the tax years at issue.
20. The Taxpayer presented a spreadsheet containing information about every parcel of property in the Ranch View Estates 2 subdivision, including the Subject Property, for each of the tax years at issue in these appeals. The Taxpayer also provided and discussed a statistical analysis that he performed of the information contained in the spreadsheets.
21. The spreadsheet information demonstrates that the assessed values of all the properties presented was the same for tax years 2017 and 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* 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).

22. The County Board presented the PRF for the Subject Property demonstrating the factors used in the cost approach to valuing the Subject Property, as well as a table regarding all of the qualified sales that occurred in the economic area of the Subject Property used in verifying the value attributed to each of the characteristics of residential properties in those areas, including the Subject Property.
23. The PRF for the Subject Property indicates that a land valuation study and reappraisal were conducted by the county that resulted in new valuations for 2017.
24. The Taxpayer alleged that the increase in value of the Subject Property was an unreasonably large increase from the prior year's valuation.
25. 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
26. The Taxpayer argues that the Subject Property's increase in values from the prior years is an unreasonable increase when the properties with the first and third largest increase have finished basements and pools, characteristics that the Subject Property does not share.
27. The PRF of the Subject Property for each tax year shows that the County Assessor did not attribute any value to the Subject Property for a pool or basement finish, only value for the unfinished basement square footage. The PRF for the properties with the first and third largest increase were not presented to the Commission to show the value attributed to these properties for swimming pools or finished basement area.
28. The Taxpayer further alleged that the assessed value of the Subject Property had an unreasonable increase compared to the increases or decreases in assessed value for all of the other properties in the Ranch View Estates 2 subdivision from the prior year's valuation.
29. As indicated in the table provided by the Taxpayer, the Subject Property had the second largest change in value from the prior assessment year in the Ranch View Estates 2 subdivision.
30. The table presented by the Taxpayer includes all above ground living area as well as all finished basement square footage used when determining the per square foot (psf) value of the improvement component of the properties presented.
31. Professionally accepted appraisal techniques attribute different values to above ground square footage depending on the quality, condition, and type of structure (i.e. ranch style residences have higher cost to construct psf than two story residences) as well as attributing lower psf values for finished basement square footage.¹¹
32. Comparing all improved square footage of every property in the subdivision regardless of quality, condition, or style of construction does not present an analysis of comparable per square foot assessed values.

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).

¹¹ See generally, *Marshall & Swift Residential Cost Handbook*, pg Good-1 through Good 28 (12/20/2019).

33. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
34. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹³
35. The Taxpayer did not present the Property Record File (PRF) for any of the properties discussed to allow the Commission to determine the basis for their current valuations or their prior year valuations. Information regarding the size of the lots, square footage, quality, condition, amenities, etc. of the adjoining properties was not presented to the Commission for analysis. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹⁴
36. The Taxpayer’s analysis has demonstrated the changes in values for a substantial number of properties for several tax years but does not present information to allow the Commission to determine the basis of these changes in value to determine if they are unreasonable or arbitrary.
37. 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.
38. 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 Property for tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is:

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 9, 2018, 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.*

Land	\$ 98,200
<u>Improvements</u>	<u>\$437,900</u>
Total	\$536,100

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 and 2018.
7. This Decision and Order is effective on March 20, 2020.

Signed and Sealed: March 20, 2020

Steven A. Keetle, Commissioner