

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John R. Montgomery,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0075

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

Background

1. The Subject Property is a residential parcel improved with a 3,426 square foot two story residence, with a legal description of: Bennington Lake Lot 191 Block 0, Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$585,800 for tax year 2017.
3. John R. Montgomery (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$483,300 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$585,800 for tax year 2017.
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 March 13, 2019, at the Omaha State Office Building 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John R. Montgomery 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 See, 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).

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 was assessed at a higher value than the actual purchase price due to the inclusion of personal property in the purchase price.
17. The County Board presented the Property Record File (PRF) for the Subject Property demonstrating the factors used in the cost approach to valuing the Subject Property. The PRF indicates that the Taxpayer purchased the Subject Property on January 18, 2017, for \$612,500.
18. The Taxpayer alleged that the purchase price included approximately \$30,000 of personal property. However, the information presented to the Commission indicates that the value of the personal property included in the purchase was \$10,050, which would reduce the purchase price of the Subject Property to \$602,450.
19. The Taxpayer alleged that the value of the Subject Property was not equalized with other comparable properties.
20. Comparable properties share similar use (residential, commercial/industrial, or

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).

agricultural), physical characteristics (size, shape, and topography), and location.⁹

21. “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.”¹⁰
22. The Taxpayer did not present the PRF for any of the properties discussed to allow the Commission to determine the basis for their current valuations. 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.¹¹
23. The Taxpayer presented information from the County Assessor’s web site regarding two properties that he alleged were comparable to the Subject Property. This information, while not the PRF for each property, demonstrates that these properties are a different style of construction, different quality of construction, different condition, more recently constructed, have different heating and cooling systems, and have more finished basement than the Subject Property; they are therefore not comparable to the Subject Property.
24. The Taxpayer presented information regarding the improved basement square footage of the Subject Property that demonstrates that 800 square feet of the improved basement square footage listed on the county’s PRF should be removed. Using the cost detail information for the Subject Property found in the PRF, a reduction in finished basement square footage of 800 square feet would result in a reduction in value of \$31,350.¹²
25. The Commission finds and determines that the assessed value of the Subject Property for tax year 2017 is \$554,450: \$67,500 for the land component and \$486,950 for the improvements.
26. 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.
27. 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.

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

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 7, 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.*

¹² 800 sq. ft. x \$41.69 per sq. ft. of basement finish = \$33,352. \$33,352 x 0.94 neighborhood adjustment = \$31,350 (rounded).

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 2017 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 67,500
<u>Improvements</u>	<u>\$486,950</u>
Total	\$554,450

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

Signed and Sealed: March 20, 2020

Steven A. Keetle, Commissioner