

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald F. Cheloha,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0320 & 18R 0231

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

Background

1. The Subject Property is a 9.78 acre residential parcel improved with a 2,275 square foot one and one-half story finished residence and outbuilding, with a legal description of: Lands Sec-Twn-Rge 32-15-11 –Ex Irreg S 50 E 251.97 W 284.97 Ft for Grover St- Irreg S 330 Ft SW ¼ NW ¼ 9.78AC, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$384,790 for tax year 2017.
3. Donald F. Cheloha (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$304,191 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$384,800 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$369,280 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$268,384 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$369,280 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 October 21, 2019, at the Omaha State Office Building 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Donald F. Cheloha 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 Taxpayer did not challenge the assessed value of the land component of the Subject Property. For the tax years at issue in these appeals the land of the Subject Property was granted special valuation status by the county. The Taxpayer indicated that some of the other nearby acreages were not granted special valuation and that comparing the land components was problematic for this reason. The Commission agrees and will confine its analysis to the value of the improvement component of the Subject Property.
20. The Taxpayer alleged that the value of the Subject Property increased unreasonably from the prior assessed value. The Taxpayer discussed national housing price index trends but

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).

did not present information to allow the Commission to apply this discussion to the value of the Subject Property.

21. 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
22. The Taxpayer alleged that the assessed value of the Subject Property increased at an unreasonable amount relative to other comparable properties.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
24. "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."¹²
25. The Taxpayer did not present the Property Record File (PRF) or other information about the alleged comparable properties other than their assessed values and their locations on acreage lots north of the Subject Property. Without additional information about the alleged comparable properties, the Commission is unable to analyze the Taxpayer's allegations regarding the assessed value of the Subject Property relative to other properties.
26. The Taxpayer alleged that the county's application of the cost approach to valuation to the Subject Property was not proper and further that the cost approach to valuation as applied to the Subject Property generated an assessed value for the Subject Property that was too high.
27. The County Board presented the PRF for the Subject Property, which contained a cost detail value of building which showed how each of the characteristics of the improvements on the Subject Property contributed to its value using the residential properties in those areas, including the Subject Property.
28. "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. §77-1371, (2) income approach, and (3) cost approach."¹³ This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.¹⁴
29. The county's calculations shown on the cost detail for each year are based on an assessment model that utilized the Marshall and Swift Valuation service costs for

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

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001).

reproduction of a property based on the market cost for the area and year the property is being assessed.

30. The Taxpayer presented information on the costs of construction and some but not all of the built in appliances at the time the Subject Property was constructed in 2005, but he presented no information regarding these costs for 2017 or 2018 to demonstrate that the county's valuation for these tax years was unreasonable or arbitrary.
31. The Taxpayer questioned the basis of the per square foot values utilized by the County in the cost detail and presented calculations using alternative per square foot figures. The Taxpayer did not present a basis for the alternative calculations based on actual costs or other market data.
32. The Nebraska Courts have held that a taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet the burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary.¹⁵
33. The Taxpayer did demonstrate that physical depreciation, which relates to the age and physical life of an improvement, was applied to the residence but not to the outbuilding located on the Subject Property.
34. The Commission finds and determines that depreciation as applied to the other improvements should be applied to the value of the barn, which would reduce the assessed value of the improvement component by \$3,171¹⁶ in 2017, and \$2,906¹⁷ in 2018.
35. The Taxpayer alleged that the value of the barn should be further depreciated for the 2018 assessment year due to hail damage receive in June of 2018.
36. All real property in Nebraska is to be assessed at 12:01 a.m. on January 1, with that assessment to be used as the basis of taxation until the next regular assessment.¹⁸ Therefore the impact of the hail damage incurred in June of 2018 would not be applicable to the 2018 assessment.
37. The Commission finds and determines that the assessed value of the Subject Property for tax year 2017 is \$381,629, \$94,400 for the land component and \$287,229 for the improvements.
38. The Commission finds and determines that the assessed value of the Subject Property for tax year 2017 is \$366,374, \$78,880 for the land component and \$287,494 for the improvements.
39. 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.

¹⁵ *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

¹⁶ \$32,292 Replacement Cost New of Barn (RCNB) x 9.82% Physical Depreciation = \$3,171.

¹⁷ \$32,292 RCNB x 9.00% Physical Depreciation = \$2,906.

¹⁸ Neb. Rev. Stat. § 77-1301 (Reissue 2018).

40. The Taxpayer has 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 vacated.

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

Land	\$ 94,400
<u>Improvements</u>	<u>\$287,229</u>
Total	\$381,629

3. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 78,880
<u>Improvements</u>	<u>\$287,494</u>
Total	\$366,374

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 (Reissue 2018).
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 2017 and 2018.
8. This Decision and Order is effective on March 11, 2020.

Signed and Sealed: March 11, 2020

Steven A. Keetle, Commissioner