

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard L. Sanders,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0457

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 2,524 square foot two story residence, with a legal description of: The Oaks –A Replat- Lot 749 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$217,300 for tax year 2017.
3. Richard L. Sanders (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$170,600 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$217,300 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 July 25, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Richard L. Sanders was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) and Tim Tran of the Douglas County Assessor/Register of Deeds Office were 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

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 increase in the assessed value of the Subject Property from the prior tax year is too great and that the value should be set at the same level as the prior assessment year. In the alternative, the Taxpayer argued that the value of the Subject Property for the 2017 tax year is too high relative to the subsequent tax year and that the value of the Subject Property should be no greater than the subsequent tax year.
17. 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 For this same reason, the Commission finds that a subsequent year’s assessment is not relevant to the prior year’s valuation.
18. The Taxpayer discussed the condition of the Subject Property, particularly the condition of the basement finish due to water infiltration. The Taxpayer presented written materials

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).

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).

that were submitted at the protest hearing before the County Board, but he did not present photographs of the Subject Property for review by the Commission.

19. The County Board presented the Property Record File (PRF) for the Subject Property as well as a spreadsheet of information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.
20. The County Appraiser indicated that after reviewing all of the information presented at the hearing regarding the Subject Property, including the PRF and the sales in the economic area of the Subject Property, his opinion is that the condition rating of the Subject Property should be changed to average and the value attributed to the basement finish should be removed, which would reduce the value of the improvement component by \$26,500¹¹ for tax year 2017.
21. The Commission finds and determines, based on the information before it in the present proceedings, that the assessed value of the Subject Property for tax year 2017 is \$190,800, with the value of the improvement component set at \$170,400 and \$20,400 for the land component.
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 2017 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 20,400
<u>Improvements</u>	<u>\$170,400</u>
Total	\$190,800

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).

¹¹ The County Appraiser stated that this was determined by adding the \$10,000 value for the good designation to the value of the basement finish of \$20,800 and multiplying that by the NBHD Adj. factor of .86. $10,000 + \$20,800 = 30,800 \times .86 = \$26,488$ rounded to \$26,500.

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 June 19, 2020.

Signed and Sealed: June 19, 2020

Steven A. Keetle, Commissioner