

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Zachary D. Rigg,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0447

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 1,195 square foot multi level residence, with a legal description of: Linden Place Replat Lot 31 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$154,800 for tax year 2017.
3. Zachary D. Rigg (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$128,100 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$140,000 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 February 11, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Zachary D. Rigg 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

1. The Taxpayer alleges that the increase in assessed value from the prior year was excessive and did not take into consideration the adjustment to the prior year’s value.
2. 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
3. The Taxpayer stated that a parcel directly adjacent to the Subject Property had been foreclosed and as of the assessment date was vacant and poorly maintained for several years. The Taxpayer alleged that the value of the Subject Property should be reduced due to the negative influence of the neighboring property.
4. The Taxpayer did not offer any information to allow the Commission to quantify the impact of the condition or status of the vacant neighboring property on the value of the Subject Property.

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)

5. The Taxpayer offered information pertaining to the condition of the Subject Property, including but not limited to the cabinetry, fixtures, counters, and HVAC systems. Additionally, the Taxpayer indicated that there were not partitions in the basement and that there was only one plumbing fixture in the basement.
6. The County Appraiser, after reviewing the information presented at the hearing, as well as the information contained in the Property Record File (PRF) for the Subject Property, stated that the calculation contained in the Market Calculation Detail (MCD) contained in the PRF for land and improvements would be the correct assessed value of the Subject Property if the characteristics of the Subject Property were changed by removing a half bath and the basement finish.
7. The Commission finds and determines that the condition rating of the Subject Property is average rather than good for tax year 2017, and that this condition rating should be reflected in the calculation of value contained in the Market Calculation Detail when figuring the assessed value of the Subject Property.
8. The Commission determines that the assessed value of the Subject Property is \$22,000 for the land component and \$111,600 for the improvements, resulting in a total value of \$133,600 for tax year 2017.¹¹
9. 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.
10. 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	\$ 22,000
<u>Improvements</u>	<u>\$111,600</u>
Total	\$133,600

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 \$53,775 (1,195 square feet above ground living area x \$45 per square foot) + \$7,000 (Garage Base 2) + 10,000 (Baths 2 x \$5,000 per bath) + \$6,720 (224 square feet solar room x \$30 per square foot) + \$13,200 (1,100 square feet Basement 8'Block Unfinished x \$12 per square foot) + \$10,755 (1,195 square feet central H&A x \$9 per square foot) - \$3,000 (Multi-Level) -\$6,250 (Market Age) + \$24,000 (Constant) = \$116,200 x .96 Nbhd Adj = \$111,600 (rounded).

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 January 22, 2020.

Signed and Sealed: January 22, 2020

Steven A. Keettle, Commissioner