

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kenneth L. Nanfito,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0060 & 18R 0086

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 2,344 square foot ranch style residence, with a legal description of: Bryn Mawr Lot 93 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$408,300 for tax year 2017.
3. Kenneth L. Nanfito, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$269,560 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$332,000 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$332,000 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$281,280 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$332,000 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, Rm 227, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Kenneth L. Nanfito 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 alleges that the assessed value of the Subject Property is not equalized with the assessed values of other comparable properties.
20. The assessed value for the Subject Property and each of the six properties presented as comparable remained the same from tax year 2017 to tax year 2018.⁹
21. The Taxpayer presented a chart containing information about six different ranch style residences with a construction style of masonry brick that he alleged were comparable to the Subject Property. The Taxpayer’s requested value for the Subject Property is the

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).

⁹ The assessed value of the Subject Property was changed by the County Board at the protest level in 2017, but that value remained the same for tax year 2018.

average per square foot value of the six other properties presented, which average excludes the per square foot value of the Subject Property.

22. The Taxpayer also presented the Property Record Files (PRF) for each of the six properties presented as comparable for tax years 2017 and 2018.
23. The County Board presented the PRF for the Subject Property for tax years 2017 and 2018, as well as information regarding all of the qualified sales that occurred in the economic area of the Subject Property, which were used in determining the value attributed to each of the characteristics of residential properties in that area, including the Subject Property.
24. The Subject Property and one of the properties presented as comparable are in the Bryn Mawr subdivision, while the other five properties presented are in the Ridgefield subdivision. The PRFs show that the Bryn Mawr subdivision and the Ridgefield subdivision are not only different neighborhoods, but for purposes of assessment, they are in different market areas.
25. For the two different market areas the County Assessor utilized two different assessment models that apply different values to different characteristics, features, and amenities using different comparable sales when determining value.
26. The Taxpayer discussed the characteristics of the Subject Property, stating that the Subject Property had not been updated in 30 years and that the water heater was original, but that the HVAC system had been replaced. The information presented by the Taxpayer did not demonstrate that the county's determination of quality or condition for the Subject Property were unreasonable or arbitrary.
27. The Subject Property has the highest quality of construction rating of any of the properties presented, being rated as very good quality while all of the other properties were rated good quality. The Subject Property had a condition rating of good while the other six properties were rated either good condition or the lower average condition. The Subject Property is the second smallest property in terms of above ground square footage and it is the second newest, having been constructed in 1988.
28. Generally the base construction cost per square foot increases as the quality of the structure increases and decreases as the size increases.¹⁰
29. All of the properties presented are ranch style properties of masonry or brick construction with various amounts and quality of basement finish and other amenities such as fireplaces, sunrooms, walkout basements, garage sizes, etc.
30. Reviewing all of the information presented, the Subject Property, with its superior quality and condition ratings, size, age, and amenities, should have the highest assessed value per square foot among the properties presented for review.
31. The Taxpayer's requested value was determined by averaging the assessed values of other properties, and then applying the averaged per square foot value to the area of the Subject Property's land component. This approach is not identified in the Nebraska

¹⁰ Marshall & Swift/Boeckh LLC, *Residential Cost Handbook*, (12/2009 -12/2010) at Avg-19-21

Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.¹¹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.

32. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.¹² Additionally, “[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments,”¹³ particularly when the Subject Property has a higher quality of construction rating than any of the other properties presented.
33. The Taxpayer alleges that adjustments to the assessed value of the Subject Property and other properties for tax year 2019 demonstrate that the 2017 and 2018 assessed value of the Subject Property is not equalized with other comparable properties.
34. The Taxpayer did not present any of the 2019 PRFs for the Subject Property or any of the properties presented as comparable.
35. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁴ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁵ For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
36. 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.
37. 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:

¹¹ See, Neb. Rev. Stat. §77-112 (Reissue 2018).

¹² See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

¹³ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

¹⁴ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁵ 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).

Land	\$ 47,000
<u>Improvements</u>	<u>\$285,000</u>
Total	\$332,000

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 years 2017 and 2018.
7. This Decision and Order is effective on January 31, 2020.

Signed and Sealed: January 31, 2020

Steven A. Keetle, Commissioner