

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bradley T. Masterson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15R 0627

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

Background

1. The Subject Property is a 2,827 square foot ranch style residential parcel, with a legal description of: Indian Creek Lot 32 Block 0 –Ex Irr SESTRLY 4.06 Ft Lt 32, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$766,400 for tax year 2015.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$743,159 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$766,400 for tax year 2015.
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 September 19, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room E, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. LaShel Masterson was present at the hearing (Taxpayer).
8. Larry Thomsen of the Douglas County Assessor/Register of Deeds office 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 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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 asserted that the Subject Property was assessed at higher than actual or fair market value and that the assessed value of the Subject Property was not equalized with several similar homes located near the Subject Property.
17. The Taxpayer provided a spreadsheet listing the square footage and assessed value for three alleged comparable properties. Additionally the spreadsheet includes the sale date and sale price of one of these three alleged comparable properties. The Spreadsheet averages the sales price and assessed value per square foot of above ground living space as well as total finished space.
18. The Taxpayer provided information regarding the characteristics of the Subject Property and the alleged comparable properties, but did not provide the Property Record Files (PRF) for these alleged comparable properties.
19. The County provided the PRF for the Subject Property which lists the characteristics of the Subject Property as well as how those characteristics and other factors such as depreciation and other adjustments affect the assessed value of the Subject Property.

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

20. Without the equivalent information for the alleged comparable properties, the Commission is unable to properly analyze the Taxpayer's claims regarding the assessed value of the Subject Property.
21. Based on the information and documents provided, the Commission is unable to find that the alleged comparable properties are comparable to the Subject Property. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.⁹ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁰ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach. Without quantified adjustments to the alleged comparable properties for all of their different physical characteristics, the Taxpayer's assertions based upon the comparison of the alleged comparable properties and the Subject Property are given little weight.
22. 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.
23. The Taxpayer has not 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 affirmed.

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 2015 is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$120,000
<u>Improvements</u>	<u>\$646,400</u>
Total	\$766,400

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 (2016 Cum. Supp.).
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 2015.

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁰ *Id.*

7. This Decision and Order is effective on December 28, 2017.

Signed and Sealed: December 28, 2017.

Steven A. Keetle, Commissioner