

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mona G. Lokey,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0238

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

Background

1. The Subject Property is a residential parcel improved with a 1,568 square foot one and one-half story finished style residence, with a legal description of: Keystone Park Lot 11 Block 0 S 96 N 261.33 E 208.33 FT, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$222,200 for tax year 2018.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$202,900 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$222,000 for tax year 2018.
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 December 4, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle
7. Gayle and Mike Lokey were present at the hearing (Taxpayer).
8. Stan Mlotek, Real Estate Specialist with 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 a determination of the County Board of Equalization is de novo.²

¹ 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

16. The Taxpayer alleges that the increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary.
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
18. The Taxpayer alleged that the condition rating of the Subject Property was too high resulting in an assessed valuation that was too high.
19. The Taxpayer presented photographs of portions of the interior and exterior of the Subject Property and discussed the condition of the improvements.
20. The County Board presented the Property Record File (PRF) for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property, including the sale of the Subject Property in 2016 for \$263,000, used in

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

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. County 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).

determining the value attributed to each of the characteristics of residential properties in the area to support the per square foot assessed values of the Subject Property.

21. The Commission cannot determine based on the information before it that the condition rating of average for the Subject Property and the determination that the basement finish is fair finish, as determined by the County Assessor, are unreasonable, arbitrary, or incorrect.
22. The Taxpayer alleged that the land component of the Subject Property was not equalized with other properties in the area.
23. The Taxpayer presented the PRF for seven parcels of residential property, five located in the same subdivision as the Subject Property and three located in nearby subdivisions. A review of the land values of these parcels indicated that the per acre values are not the same from parcel to parcel but that as the parcels increase in size their values increase.
24. Professional appraisal practice holds that “A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land.”¹¹
25. The land component valuations are also consistent with the assessment principle that generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.¹²
26. The Taxpayer next alleges that the assessed value of the improvements located on the Subject Property is not equalized with other comparable properties.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
28. “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.”¹⁴
29. The PRFs presented by the Taxpayer are for a wide variety of properties consisting of different styles and types of construction: ranches, two stories, multi-level, and one and one-half story finished, brick, vinyl siding, traditional siding and stucco. The PRFs further demonstrate that the differences in values between the properties presented are due to differences in the characteristics of the properties.

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008)

¹² Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013)

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

30. The Subject Property, for example, is improved with a one and one-half story brick residence and one of the other properties presented is also improved with a one and one half story brick residence (the Other Brick Property). The Other Brick Property has a higher per square foot value applied to determine its base value, but it is smaller, has a basement garage rather than an attached garage, has no detached garage, and is ten years older with more physical depreciation than the Subject Property. These inferior characteristics of the Other Brick Property result in a lower total improvement value.
31. Additionally, while it is only one factor in the assessments, the Commission notes that the large detached garage located on the Subject Property contributes over \$74,000 to its total assessed value when the next largest detached garage is approximately 1,400 square feet smaller and is assessed at just under \$21,000, for tax year 2018.
32. The Taxpayer has failed to demonstrate that the assessed value of the Subject Property is not equalized with other comparable properties.
33. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with the value of the property located at 4003 Clifton Drive that has a large outbuilding located on it that is not assessed by the County.
34. The Taxpayer presented an aerial photograph of the property which shows what appears to show three structures located on the property rather than the two indicated on the PRF. The aerial photograph indicates that it was copyrighted sometime in 2019, more than a year after the assessment date, and on the accompanying street view only one structure is visible from the street.
35. The Commission was not presented with information about the date of construction of this additional structure, its type of construction, or other features that would indicate its value as of the assessment date to allow the Commission to determine any difference in the value of the property located at 4003 Clifton Drive due to the additional structure that could demonstrate a lack of equalization of assessments between it and the Subject Property.
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 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

| | |
|---------------------|------------------|
| Land | \$ 22,400 |
| <u>Improvements</u> | <u>\$199,600</u> |
| Total | \$222,000 |

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 year 2018.
7. This Decision and Order is effective on February 18, 2021.

Signed and Sealed: February 18, 2021

Steven A. Keetle, Commissioner