

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rose M. Wozny,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0266 & 19R 0580

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

Background

1. The Subject Property is a residential property improved with a 1,016 square foot split entry residence, with a legal description of: Ambler Place Lot 5 Block 41 W 18 Ft Lt 4 & E 38 Ft & ½ Vac Alley 56 x 133, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$121,200 for tax year 2018 and \$120,100 for tax year 2019.
3. The Taxpayer protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$85,000 for tax year 2018 and 2019.
4. The County Board determined that the taxable value of the Subject Property was \$107,700 for tax year 2018 and \$120,100 for tax year 2019.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on November 11, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Rose M. Wozny was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, 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 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

1. The Taxpayer alleged that the change in assessed value of the Subject Property from the 2016 tax year to the current tax year(s) was too great.
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 alleged that the assessed value of the Subject Property should be reduced because of its condition.
4. The Taxpayer discussed the windows, electrical outlets, sidewalks, bathroom ventilation, and kitchen cabinets of the Subject Property.
5. The County Board presented the 2018 and 2019 Property Record Files (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, 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 2018 and 2019 value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.

6. In addition to the PRF the County Board presented a packet for each tax year containing interior and exterior photos of the Subject Property and the report from the protest before the County Board for each tax year.
7. The PRFs contain account notes that indicate the County Assessor's office reviewed the condition of the Subject Property and reduced the condition rating for tax year 2019 resulting in a total valuation of \$120,100. The PRF's further indicate that the County Assessor used a completely different assessment model for tax 2018 making the Commission unable to determine the impact of condition rating change on the 2018 assessment model. The Commission notes, however, that the reduction in the assessed value by the County Board for 2018 makes it lower than the 2019 value with the lower condition rating.
8. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable homes.
9. The Taxpayer discussed the recent sales prices and assessed values for properties located near the Subject Property.
10. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
11. "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."¹²
12. The Taxpayer did not present the PRF for any of the properties discussed as comparables or sales for valuation or equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as style of construction, quality, condition, age, amount and type of basement finish, etc.¹³
13. The Commission cannot determine if the properties presented as comparable to the Subject Property are comparable.
14. 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.

¹¹ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 16, 2019, includes the following:

NOTE: Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

15. 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 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 is:

Land	\$ 14,700
<u>Improvements</u>	<u>\$ 93,000</u>
Total	\$107,700

3. The taxable value of the Subject Property for tax year 2019:

Land	\$ 14,700
<u>Improvements</u>	<u>\$105,400</u>
Total	\$120,100

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5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2018 and 2019.
9. This Decision and Order is effective on February 3, 2021.

Signed and Sealed: February 3, 2021

Steven A. Keetle, Commissioner