

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nicholas F. Sullivan,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0270

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 2,667 one and one-half story residence, with a legal description of: Lot 235, Pacific Meadows 2nd Addition, an Addition to the City of Omaha, records of Douglas County, Nebraska, together with that part of Lot 234, Pacific Meadows 2nd Addition described as follows: Beginning at the Southwest Corner of said Lot 234; thence North 11°26'23" East (Assumed Bearing) 82.16 Feet on the West Line of said Lot 234; thence South 10°36'47" West 82.17 feet to the South Line of said Lot 234; thence Northwesterly on the South Line of said Lot 234 on a 750.61 foot radius curve to the left, chord bearing North 78°30;44" West, chord distance 1.19 feet, an arc distance of 1.19 feet to the Point of Beginning.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$331,800 for tax year 2018.
3. Nicholas F. Sullivan (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value between \$260,000 and \$280,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$331,800 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 6, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Nicholas F. Sullivan was present at the hearing.
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
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 alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
17. The Taxpayer presented information from the County Assessor's web site regarding six properties that he alleged were comparable to the Subject Property.

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).

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).

18. The Taxpayer also offered the Property Record File (PRF) for the Subject Property as well as a list of qualified sales that occurred in the County Assessor's valuation area for the Subject Property.
19. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales that occurred in the portion of the valuation area that contains the neighborhood of the Subject Property, which was used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
21. "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."¹⁰
22. The information presented regarding the Subject Property and the other properties presented by the Taxpayer indicate differences in the properties that impact value. The Subject Property is the only property that is a one and one-half story style property; all of the rest are two story properties. The Subject Property is one of only three of the seven properties with a condition rating of good rather than average, has more bathrooms than the other properties presented, has more walkout basement finish than any other property presented and has the largest garage.
23. The Taxpayer did not present the PRF for any of the properties presented for valuation purposes.¹¹ 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, bathrooms, amount and type of basement finish, garages, decks, porches, etc.¹²
24. The Commission is unable to determine that the six properties presented are comparable to the Subject Property.
25. The Commission cannot determine that the assessed value of the Subject Property is not equalized with other comparable properties.

⁹ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ The Taxpayer stated that he was unable to obtain the PRF's for the properties he alleged were comparable to the Subject Property due to printer issues, the County Appraiser stated that the Taxpayer had requested the PRF's the day before the hearing and that the County couldn't print for the last two days.

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 18, 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.*

26. 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.
27. 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	\$ 47,000
<u>Improvements</u>	<u>\$284,800</u>
Total	\$331,800

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 24, 2021.

Signed and Sealed: February 24, 2021

Steven A. Keetle, Commissioner