

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steven D. Shultz,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0274

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

Case No: 19R 0340

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

Background

1. The Subject Property is a residential property improved with a 1,554 square foot ranch style residence, with a legal description of: Fair Ridge Add Lot 20 Block 0 100 X 140, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$241,700 for tax year 2018 and \$295,200 for tax year 2019.
3. Steven D. Shultz (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$199,717 for tax year 2018 and \$185,976 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$241,700 for tax year 2018 and \$295,200 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 December 6, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Steven D. Shultz 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

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

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 increases in the assessed value of the Subject Property from the prior year’s assessments were unreasonable and arbitrary and the increase in assessed value was greater for the Subject Property than other properties in the neighborhood.
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 Additionally, the differences in the changes to the assessed values of the Subject Property and other properties in the neighborhood are only relevant to the current year’s assessment if the differences resulted in values that were not equalized for the current assessment year.

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).

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).

18. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with the assessed values of other comparable properties.
19. The Taxpayer presented the narrative and data that he presented to the County Board as part of the valuation protest process for tax years 2017, 2018 and 2019.
20. The Taxpayer presented several statistical analyses¹¹ including statistical analysis of the per square foot value of the Subject Property and five other properties located on South 68th Street, analyzing both on the basis of above ground square footage and above ground square footage plus basement square footage, and looking at the impact of condition rating as well.
21. 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 portion of the valuation area that contain the neighborhood of the Subject Property. This sales information was used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
22. The County Appraiser stated that the Subject Property and its entire neighborhood were reappraised in both 2018 and 2019. The PRFs for the Subject Property show that a different valuation model was used to determine the assessed value of the Subject Property for each tax year before the Commission. The Commission was not presented any information concerning the valuation model or basis of the County Board determination for tax year 2017.
23. The Taxpayer stated that there were five other ranch style properties located on the Subject Property's street and presented the 2019 PRF for the five other ranch style properties located on S. 68th Street. The Taxpayer did not presented the 2017 or 2018 PRF for any of the properties discussed in his narratives or reviewed in his analyses.
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
25. "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."¹³
26. Because the Commission has the 2019 PRF for the Subject Property and the five comparable properties, we will start with an analysis of the 2019 assessments. In 2019 the county utilized a model that valued properties based on their characteristics, such as quality, condition, age, above ground square footage, basement square footage, basement

¹¹ Included was the Omaha Single Family Housing Prices (2000-2018), Steven Shultz, University of Nebraska at Omaha (2019), which contains this caveat "It is important to point out that even though these zip codes are smaller and more homogenous than the other submarket areas, there is still likely to be considerable housing characteristic heterogeneity within many of them. For this reason, *the results of this study are not appropriate for direct use in tax protests*, which should be based on smaller and more detailed neighborhood comparable sale analyses." *Emphasis added.*

¹² See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

- finish bathrooms, bedrooms, garage square footage, walkout basements, basement outside entrances, porches, and decks with factors for condition, style, and neighborhood.
27. Based on the specific characteristics of each of the properties in 2019 these factors were applied uniformly (e.g., all basement square footage was assessed at \$5.50 psf, with an additional \$21.50 psf for each square foot of basement finish) to all six properties presented with two exceptions. The first exception was based on quality rating: above ground square footage was valued at \$75.9902 psf for good quality and \$58.539 psf for average quality. The second difference was based on condition rating: good condition properties received an adjustment of \$30,925, average condition properties received no adjustment, and fair condition properties received an adjustment of -\$36,750.
 28. For the 2019 assessment the Subject Property was rated as good quality and good condition, resulting in its assessed value being determined using the higher per square foot value for above ground square footage and the \$30,925 good condition adjustment.
 29. The 2018 PRF for the Subject Property also gives the Subject Property a good condition rating but has a quality rating of average rather than good. No information was presented as to the basis of the change in the quality rating and the Commission is unable to determine which quality rating is the correct quality rating for the Subject Property for tax years 2018 or 2019.
 30. The Taxpayer did not present the 2018 PRF for any of the S 68th street properties presented.¹⁴ Without the details contained in the PRF, the Commission is unable to determine the contributions to the 2018 valuation of the various amenities or features of the properties such as style of construction, quality, condition, age, bathrooms, walkout basement, amount and type of basement finish, fireplaces, decks, porches, etc.¹⁵
 31. The Taxpayer did present the condition ratings of four of the five other properties located on S. 68th street for tax year 2018 but the Commission was not provided information regarding the quality rating of any of the other properties for tax year 2018.
 32. The Commission is unable to determine the basis of the assessed values of the other five properties presented to determine if they were or were not assessed uniformly and proportionally with the Subject Property.
 33. The Taxpayer alleged that the Subject Property's condition rating should be average rather than good as determined by the County Assessor for both years at issue.
 34. The Taxpayer discussed the condition of the interior and exterior of the Subject Property including the windows, kitchen, and basement finish of the Subject Property as well as repairs that had been conducted since 2012.

¹⁴ The Taxpayer stated that he was unable to obtain the PRFs 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 PRFs the day before the hearing and that the County couldn't print for the last two days.

¹⁵ 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.*

35. The Taxpayer stated that he had not conducted any remodeling or improvements to the Subject Property that required a building permit. He presented a listing of building permits for four of the related properties that had been obtained since 2010, but he did not provide the estimated cost or description of the work for which the permits were taken out or if the permitted work was completed.
36. The Taxpayer presented pictures of the interior of the other property on S. 68th street rated as good condition and discussed the remodeling and features of that property.
37. The Commission finds and determines that the condition rating of the Subject Property should be average rather than good.
38. For tax year 2019 the Commission can determine the impact of the change in the condition rating and finds that the condition factor of \$30,925 should be removed and the assessed value of the improvement component of the Subject Property should be reduced to \$223,800.¹⁶
39. For tax year 2018 the Commission is unable to quantify the effects of the change of condition rating on the assessed value of the Subject Property.
40. For tax year 2018 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.
41. For tax year 2018 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.
42. For tax year 2019 the Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
43. For tax year 2019 the Taxpayer has 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 vacated.

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	\$ 40,500
<u>Improvements</u>	<u>\$201,200</u>
Total	\$241,700

¹⁶ \$254,700 - \$30,925 = \$223,775 rounded to \$223,800.

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is vacated and reversed.
4. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 40,500
<u>Improvements</u>	<u>\$223,800</u>
Total	\$264,300

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 24, 2021.

Signed and Sealed: February 24, 2021

Steven A. Keetle, Commissioner