

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Connie J. Ludwig,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0279

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

Background

1. The Subject Property is a residential parcel improved with a 2,072 square foot two story residence, with a legal description of: Rose Hill Lot 22 Block 8 ½ Vac Alley & Lts 20 21 & W 20 Ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$119,500 for tax year 2018.
3. Connie J. Ludwig (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$79,500 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$119,500 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 Keetle.
7. Connie J. Ludwig 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 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 alleged that the assessed valuation of the Subject Property did not take into account the condition of the Subject Property.
17. The Taxpayer has not occupied the Subject Property for the last 12 years and it has not had gas or water service for over 5 years as of the assessment date.
18. The Taxpayer presented pictures of the interior of the Subject Property and discussed the condition of the Subject Property and the damage caused to the interior and the items stored in the Subject Property by a break in two years prior to the assessment date.
19. The Taxpayer presented a list of city code violations for the Subject Property cited by the City of Omaha.
20. The Taxpayer presented a list of work to be done on the Subject Property including electrical, plumbing, heating and A/C as well as floor and window repair. The Taxpayer presented estimates for this work along with a quote from an exterminator to treat for termites.

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).

21. 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 portion of the valuation area that contains 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 PRF for the Subject Property indicates that the County Assessor's office has given the Subject Property a condition rating of poor which is consistent with the condition of the Subject Property as described by the Taxpayer.
23. The Taxpayer further alleged that the assessed value of the Subject Property was not equalized with other properties in the neighborhood that had similar assessed values but were in much better condition than the Subject Property. The Taxpayer did not present information as to any specific properties in the neighborhood.
24. Without information about the assessed values and characteristics of any other properties in the neighborhood the Commission is unable to evaluate the Taxpayers allegation regarding the equalized value of the Subject Property.
25. 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.
26. 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	\$ 16,700
<u>Improvements</u>	<u>\$102,800</u>
Total	\$119,500

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 26, 2021.

Signed and Sealed: February 26, 2021

Steven A. Keetle, Commissioner