

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

SGLM Inv.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0358

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

Background

1. The Subject Property is a residential parcel improved with a 2,225 square foot¹ one and one-half story residence and a separate 462 square foot ranch style residence, with a legal description of: Linwood Park Lot 14 Block 1 Lts 13 & 100 X 130, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) originally assessed the Subject Property at \$28,700 for tax year 2018.
3. The Douglas County Board of Equalization (the County Board) reviewed the value of the Subject Property as undervalued or overvalued property and corrected the assessed value to \$121,700 for tax year 2018.²
4. SGLM Inv. (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
5. The County Board determined that the taxable value of the Subject Property was \$119,500 for tax year 2018.
6. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on December 2, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
8. Larry Anzalone was present at the hearing.
9. 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

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.³

¹ As described in the Property Record File presented to the Commission.

² Neb. Rev. Stat. § 77-1504 (Reissue 2018).

³ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

11. The Commission’s review of a determination of the County Board of Equalization is de novo.⁴
12. 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.”⁵ 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.”⁶
13. 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.⁷
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
15. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

Findings of Fact & Conclusions of Law

1. The Subject Property is unusual in that it is improved with two separate residences on a single parcel. The larger of the two residences is a one and one-half story structure located on the front of the parcel and contains four rental units; the smaller residence is a ranch style structure containing an additional rental unit.
2. The Taxpayer alleged that the increase in value of the Subject Property from the prior year was too dramatic.
3. The County Board presented the Property Record File (PRF) for the Subject Property as well as a table regarding all of the qualified sales that occurred in the economic area of

⁴ 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).

⁵ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the Subject Property used in determining the value attributed to each of the characteristics of residential properties in those areas, including the Subject Property.

4. The PRF indicates that a land study was done for the 2018 assessment year which decreased the value of the land component of the Subject Property from the prior assessment year. The PRF also indicates that the one and one-half story residential structure on the Subject Property was incorrectly valued at \$0 in the prior assessment year,¹¹ but that the assessment of this residence was added back to the assessment of the Subject Property for the 2018 tax year which resulted in the increase in assessed value.
5. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹² For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹³
6. The Taxpayer stated that the sketch of the one and one-half story structure contained in the PRF for the Subject Property was incorrect. The Taxpayer said that the 14 ft. x 16 ft.¹⁴ area at the back of the first floor (the Garage) was not there as of the assessment date and that the 11 ft. x 12 ft.¹⁵ area shown on the back of the second floor (the Porch) was actually an open deck or porch area and not enclosed living space.
7. The County Appraiser stated that he had not personally inspected the property and the PRF did not indicate when the Subject Property had last been visited to confirm the measurements in the PRF. The County Appraiser further stated that, based on the Taxpayer's description, the Porch would be valued as a wood deck using the County Assessor's appraisal model rather than as square footage of the building.¹⁶
8. If the characteristics of the one and one-half story structure were changed to conform to the Taxpayer's description, with the square footage of the Garage and Porch removed from the building square footage, and the area of the Porch valued as a wood deck, the value of the one and one-half story structure on the Subject Property would be \$80,600.¹⁷ When added to the \$19,100 value of the second ranch style structure, this results in a total improvement value of \$99,700; adding the land value of \$10,700, the total assessed value for tax year 2018 would be \$110,400.
9. The Taxpayer alleged that the Subject Property was not assessed uniformly and proportionally with other comparable properties.

¹¹ It appears from the assessment history that the one and one-half story structure on the Subject Property was not given an assessed value from 2010 to 2017.

¹² See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹³ 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).

¹⁴ 14' x 16' = 224 square feet.

¹⁵ 11' x 12' = 132 square feet.

¹⁶ The ranch style structure on the Subject Property has a wood deck and it is valued at \$19.32 psf.

¹⁷ Based on the values in the PRF presented by the Taxpayer at the hearing:

2,225 square feet – 224 square feet – 132 square feet = 1,869 square feet x \$83.37 psf = \$155,819 base value
\$155,819 base value + \$3,137 HVAC adjust + \$32,637 add on value from PRF (basement, front deck, etc.) = \$191,593
\$191,593 + \$2,550 for 2nd floor Porch (132 square feet x \$19.32 psf for wood deck) = \$194,143 Replacement Cost New.
\$194,143 Replacement Cost New x 58.47% depreciation = \$113,515 depreciation.
\$194,143 - \$113,515 = \$80,628 rounded to **\$80,600.**

10. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁸
11. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁹
12. The Taxpayer did not present the PRF for any of the properties he alleged were comparable to the Subject Property but rather presented information from the County Assessor’s web site for two properties and real estate listings for two additional properties.
13. The information from the County Assessor’s web site shows that those two properties have lower quality and condition ratings than the Subject Property, which would cause their per square foot assessed values to be less than the Subject Property.
14. The real estate listings for the two additional properties do not contain information to demonstrate the quality or condition ratings of those properties and do not contain their assessed values, so the Commission cannot analyze the Taxpayer’s claim that they are not assessed uniformly and proportionally with the Subject Property. Additionally, the listed properties have a significantly higher per square foot asking price than the per square foot assessed value of the Subject Property.
15. The Taxpayer has not demonstrated that the Subject Property is not being assessed uniformly and proportionally with other comparable properties.
16. The Commission, based on all of the information presented to it and discussed above, finds that the total assessed value of the Subject Property is \$110,400 for tax year 2018.
17. 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.
18. 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 10,700
<u>Improvements</u>	<u>\$ 99,700</u>
Total	\$110,400

¹⁸ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

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 August 28, 2020.

Signed and Sealed: August 28, 2020

Steven A. Keetle, Commissioner