

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert J. Wozny,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0286

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 2,053 square foot ranch style residence with a legal description of: Arbor View Lot 35 Block 0 LT 35, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$267,200 for tax year 2018.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$247,500 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$267,200 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 31, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
7. Robert J. Wozny and Nicole Lesko were 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 the 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 value of the Subject Property is not equalized with other comparable properties.
17. The Subject Property was built in 2015. The Taxpayer purchased the Subject Property for \$275,027 in December of 2015 and the Taxpayer requested that the value of the Subject Property be set at 90% of this purchase price based on the assessments of other properties in the same neighborhood as the Subject Property.
18. The Taxpayer presented information from the County Assessor’s web site regarding the Subject Property and three other properties in the same neighborhood as the Subject Property that had recently sold. The Subject Property had a sales price to assessed value ratio of 97.2%, a ranch style property had a ratio of 88.4%, a two story property had a ratio of 87.8%, and a one and one-half story property had a ratio of 92.5%.
19. The County Board presented the Property Record File (PRF) for the Subject Property as well as a list of valid sales used to determine assessed values in the area of the Subject Property.

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).

20. The list of valid sales presented contained 92 sales in the same neighborhood as the Subject Property with sales price to assessed value ratios ranging from 87.8% to 113.3%.
21. All of these 92 properties were constructed in 2015, 2016, or 2017 and were sold in 2015, 2016, or 2017. These properties had the same quality and condition rating as the Subject Property, and were either one and one-half story, two story, or ranch style single family residences.
22. The Subject Property and two of the three sales in the same neighborhood presented by the Taxpayer are included in the list of valid sales used to determine the assessed values in the area of the Subject Property.⁹
23. The County Appraiser stated that the county determined values for residential properties by determining unit values for features of each property, such as a per square foot value for each square foot of living area or each square foot of finished basement, fireplaces, sprinkler systems, etc.
24. The County Appraiser further stated that these unit values may vary; for example, with all other characteristics being equal, the per square foot value of a ranch style property would be higher than a two story property due to the higher construction costs for a ranch style property.
25. The County Appraiser stated that the sales were then reviewed to determine if the values determined using the unit values were in line with the sales prices for similar properties and the assessed values were adjusted if necessary.
26. When reviewing assessments “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”¹⁰
27. “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹¹
28. “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to

⁹ The basis for the exclusion of one of the Taxpayer’s three sales from the valid sales list was not presented to the Commission to review.

¹⁰ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹¹ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive.”¹²

29. The ratio of the sale price of the Subject Property to its assessed value is in the middle of the range of ratios of the sales in the neighborhood of the Subject Property. The Taxpayer has not shown that the valuation placed upon the taxpayer’s property when compared with valuation placed on other similar property is grossly excessive based on the ratio of sales prices to assessed values.
30. The Nebraska Court of Appeals has also held that “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.”¹³
31. The Taxpayer did not provide the PRFs for the properties he presented. 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 (ranch, two story, etc.), improved basement square footage, etc., to determine if the Subject Property was assessed at a materially different level than other comparable properties on a per square foot basis.¹⁴
32. 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.
33. 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	\$ 40,800
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¹² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

¹³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 21, 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.

<u>Improvements</u>	<u>\$226,400</u>
Total	\$267,200

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 June 5, 2020.

Signed and Sealed: June 5, 2020

Steven A. Keetle, Commissioner