

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Casey A. Jenkins,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0230

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 2,716 square foot two story residence, with a legal description of: Copperfields Lot 213 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$388,700 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 \$305,972 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$335,400 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 2, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Casey A. Jenkins was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of 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 condition rating of the Subject Property was too high based on the actual condition of the Subject Property and that the repairs the Subject Property required reduce the value of the Subject Property.
17. The Taxpayer purchased the Subject Property in 2012 and discussed the ownership history of the Subject Property prior to the 2012 purchase, including tax liens and foreclosures, but did not present information regarding tax liens or foreclosures pending on the assessment date which might impact ownership rights.
18. The Taxpayer presented pictures of the interior and exterior of the Subject Property and discussed its condition.
19. The Taxpayer presented estimates for the replacement of the driveway, replacement of the patio and landscaping, complete replacement of the A/C system, complete interior repainting, replacement of sections of the interior wood flooring, and hail damaged windows. The estimate to replace the hail damaged windows was \$23,000 (rounded).

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 Taxpayer further alleged that in addition to the above the kitchen cabinets, carpet, and shower in the master bath need to be replaced and the bathroom ceiling needs to be repaired and the in order for the condition rating of the Subject Property to be correct.
21. The County Board presented the Property Record File (PRF) for the Subject Property as well as a spreadsheet of information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
22. The County Appraiser stated that painting, flooring style changes, and A/C repair and replacement cycles are considered routine maintenance and wouldn't change the condition rating in County's appraisal model. The County doesn't place an assessed value on landscaping and the absence of landscaping would not impact the condition rating or assessed value of the Subject Property. The other interior items discussed by the Taxpayer and the condition of the driveway and patio are consistent with the condition rating determined by the County Assessor's office.
23. The Commission finds the damaged condition of the windows of the Subject Property as of the assessment date described by the Taxpayer and other information presented was inconsistent with a condition rating of good for the Subject Property as of the assessment date.
24. The Commission did not have information to allow it to determine the impact of changing the condition rating of the Subject Property. However, removing the cost of the window replacement from the value determined by the County Assessor's valuation model would account for the damage to the windows. Reducing the assessment by the cost of replacing the windows would result in an improvement value of \$309,600,⁹ which would be higher than the \$279,300 value determined by the County Board for the improvements on the Subject Property.
25. The Taxpayer alleges that the assessed value of the Subject Property is not equalized with other comparable properties.
26. The Taxpayer presented the PRFs for four properties located in the same subdivision as the Subject Property as comparable properties for equalization purposes.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
28. "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."¹¹

⁹ \$332,600 RCNLD - \$23,000 (window replacement estimate rounded) = \$309,600

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

29. The PRF for the Subject Property and the four comparable properties indicate that while they are all two story residences rated good quality and good condition, differences in the calculation of the assessed value vary based on differences in their characteristics such as age, basement finish, fireplaces, etc., with one significant exception discussed below.
30. The Subject Property and the four properties presented are all adjacent to Lamont Circle and each other. They are all located in the same neighborhood for assessment purposes. The PRFs further indicate that the Subject Property has a neighborhood adjustment of 1.000 applied while the other comparable properties have a neighborhood adjustment of 0.8027 applied.
31. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹³
32. Applying a uniform neighborhood adjustment to the value of the improvements on the Subject Property that accounts for the window damage as of the assessment date results in an equalized value of the improvements of \$248,500.¹⁴
33. The Commission finds and determines that the equalized assessed value of the Subject Property is \$56,100 for the land component and \$248,500 for the improvement component resulting in a total assessed value of \$304,600 for tax year 2018.
34. 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.
35. 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	\$ 56,100
<u>Improvements</u>	<u>\$248,500</u>
Total	\$304,600

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

¹⁴ \$309,600 (value of improvements accounting for window damage) x 0.8027 NBHD adjustment = \$248,500 (rounded).

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 3, 2021.

Signed and Sealed: February 3, 2021

Steven A. Keetle, Commissioner