

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Andrew J. Lux,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0232

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 1,852 square foot ranch style residence, with a legal description of: Elkhorn Ridge Estates Lot 27, Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$395,700 for tax year 2018.
3. Andrew J. Lux (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$395,700 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 4, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Andrew J. Lux 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 value of the Subject Property was not equalized with the assessed value of other comparable properties.
17. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
18. “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.”¹⁰
19. The Taxpayer presented the Property Record File (PRF) for the Subject Property and four other ranch style properties rated good quality of construction and located near the Subject Property in the same “horseshoe” street of properties.
20. The Taxpayer reviewed and discussed the per square foot values and cost detail tables for each of these properties from the PRF and how the per square foot value of the Subject

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

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

Property was different for certain items and provided an analysis of those numbers. For example, the fireplace in the Subject Property contributed \$2,049 to the value calculation while the fireplaces in the other four properties contributed \$1,950.

21. The Taxpayer requested that the lowest per square foot value for each characteristic or item be applied to the calculation of the assessed value of the Subject Property.
22. Professionally accepted appraisal practices hold that generally the base construction cost per square foot increases as the quality of the structure increases and decreases as the size increases.¹¹
23. The PRFs presented indicate that, excluding the Subject Property, this general principle applied to the assessments of the comparable properties: as the size of the improvements increased, the per square foot value for the above ground living area decreased. The per square foot value of the above ground living space of the Subject Property is higher than the per square foot values for properties larger and smaller than the Subject Property.
24. The County Appraiser stated that it appeared from the PRFs that different costing tables were applied to the calculation of the assessed value of the Subject Property than to the comparable properties.
25. A further review of the PRFs indicate that different depreciation rate tables and a different neighborhood adjustment were applied when calculating the value of the improvements on the Subject Property versus the other comparable properties.
26. Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, 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
27. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹⁴
28. The value of the Subject Property calculated using the median per square foot values of the characteristics of the properties that bracket the above ground square footage of the Subject Property,¹⁵ the lowest physical depreciation rate shown,¹⁶ and the uniform NBHD

¹¹ Marshall & Swift/Boeckh LLC, *Residential Cost Handbook*, (12/2009 -12/2010) at Avg-19-21.

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 *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

¹⁵ Where one of the other of these properties do not have those features to allow for the calculation of a median value the Commission will apply the per unit value of that feature applied to the property closest to the size of the Subject Property.

¹⁶ The Subject Property is the newest and should have the lowest physical depreciation.

adjustment would result in an assessed value for the improvements on the Subject Property of \$329,200.¹⁷

29. The Commission finds and determines the equalized assessed value of the Subject Property is \$56,400 for the land component and \$329,200 for the improvement component resulting in a total assessed value of \$385,600, for tax year 2018.
30. 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.
31. 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	\$ 56,400
<u>Improvements</u>	<u>\$329,200</u>
Total	\$385,600

Subject	Unit	Median Unit Value	RCN
Bldg Value	1852	sq ft \$ 115.09	\$ 213,147
HVAC Adj	1852	sq ft \$ 1.479	\$ 2,739
"Base Value"			\$ 215,886
Add Ons			
Nat Stone/moss rock	150	\$ 10.26	\$ 1,539
Sprinkler system	1	\$ 3,500.00	\$ 3,500
Fireplace Gas	1	\$ 1,950.00	\$ 1,950
Allowance	1	\$ 4,675.00	\$ 4,675
Bsmnt Conc 9 ft	1852	sq ft \$ 22.66	\$ 41,966
Finished	1268	sq ft \$ 38.12	\$ 48,336
Garage Attached	1248	sq ft \$ 31.095	\$ 38,807
Porch Open Slab	250	sq ft \$ 7.365	\$ 1,841
Wood Deck	100	sq ft \$ 32.15	\$ 3,215
Slab Roof Ceiling	102	sq ft \$ 31.38	\$ 3,201
Cvrd Wood Deck	150	sq ft \$ 43.98	\$ 6,597
		Total Add-On Value	\$ 155,627
Physical Depreciation	2%		\$ 7,430
		RCNLD*	\$ 364,083
NBHD Adjustment	0.9041	Adjusted RCNLD (Rounded)	\$ 329,200

*Replacement Cost New Less Depreciation

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 10, 2021.

Signed and Sealed: February 10, 2021

Steven A. Keetle, Commissioner