

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James P. and Kathleen M. Gade,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0255

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 3,433 square foot raised ranch style residence, with a legal description of: West Highlands Add Lot 2, Block 7 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$535,500 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 \$410,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$497,400 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 Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. James P. and Kathleen M. Gade 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 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 should be reduced due to prior reductions in the assessed value obtained through the protest and appeal process in the prior tax years as well as a reduction in assessed value obtained in the protest process in the subsequent tax year.
17. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
18. 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 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.

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

¹⁰ 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).

19. The Taxpayer alleged that the uncommon configuration of the Subject Property makes it hard to value, requiring them to present comparable sales from outside the area of the Subject Property. The Taxpayer provided photographs of the sold properties along with a table of information showing some of the characteristics of the sold properties as well as their overall assessed values for tax year 2017.
20. The Taxpayer did not present the PRF for any of the properties presented for valuation or equalization purposes. 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 of construction, quality, condition, amount and type of basement finish, sun rooms, decks, garages, etc.¹¹
21. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the value of the adjoining property due to the fact that the value of the adjoining property was reduced in the prior assessment year by the County Board.
22. Without the PRF for the adjoining property the Commission is again unable to evaluate the Taxpayer's allegation. None of the contribution to value of the characteristics of the adjoining property, valuation history, or basis of the original valuation or the reduction in prior assessment years is before the Commission.
23. The Taxpayer alleged that the value of the Subject Property should be reduced due to its condition.
24. The Taxpayer presented photographs of the exterior of the improvements on the Subject Property as well as retaining walls and sidewalks and discussed the condition of the interior and exterior of the Subject Property.
25. The Taxpayer did not present information that would demonstrate that the condition determination of average for the Subject Property used by the County Assessor and County Board in determining the value of the Subject Property was arbitrary, unreasonable or incorrect.
26. 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.
27. 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.

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 18, 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.*

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	\$ 90,100
<u>Improvements</u>	<u>\$407,300</u>
Total	\$497,400

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 8, 2021.

Signed and Sealed: February 8, 2021

Steven A. Keetle, Commissioner