

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Philip T. Taylor,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0257

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 624 square foot ranch style residence, with a legal description of: Christie Heights Lot 24 Block 8 LT 23 & S 7 FT 47 X 115, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$59,100 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 \$45,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$59,100 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 3, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Philip T. and Kathy Taylor were present at the hearing for the Taxpayer.
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 increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary.
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 Taxpayer alleged that the assessed value is too high as indicated by the purchase price of the Subject Property.
19. The Taxpayer purchased the Subject Property for use as a rental property in April 2014 for \$40,000. The Taxpayer stated that since that time only cleaning and minimal repairs have been made to the Subject Property.
20. “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

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).

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.”¹¹
“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.”¹²

21. 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.
22. The information presented to the Commission does not indicate that the purchase price of the Subject Property in 2014 is determinative of the market value as of the assessment date.
23. The Taxpayer alleged that recent sales indicate the assessed value of the subject property is too high.
24. The Taxpayer presented the sales of two properties in the same subdivision as the Subject Property obtained from the County Assessor’s subdivision sales search.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
26. “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.”¹⁴
27. The Taxpayer did not present the PRF for any of the properties presented for valuation 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 quality, condition, age, amount and type of basement finish, garages, porches, etc.¹⁵
28. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the valuations of other comparable properties.

¹¹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹² *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁵ 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.*

29. The Taxpayer presented information from the County Assessor's web site regarding seven parcels located within a block of the Subject Property.
30. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is again unable to determine the contributions to value of the various amenities or features of the properties such as quality, condition, age, amount and type of basement finish, garages, porches, etc.
31. The information that was presented from the County Assessor's web site indicates that the properties presented have characteristics that differ from the Subject Property. Differences in style of construction, quality, condition, features such as basements, garages, enclosed porches, decks, etc., are shown on the information from the County Assessor's web site.
32. The Commission cannot find that any of the properties presented by the Taxpayer are comparable to the Subject Property or what adjustments could be made to make them comparable to the Subject Property for purposes of determining actual or equalized values.
33. Finally the Taxpayer alleged that crime and transients in the area of the Subject Property reduced the value of the Subject Property.
34. The Taxpayers did not presented any information to allow the Commission to quantify the amount or impact of crime and transients in the area on the value of the Subject Property.
35. 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.
36. 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	\$ 6,400
<u>Improvements</u>	<u>\$52,700</u>
Total	\$59,100

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