

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Stanley D. Mason,
Appellant,

Case No: 19R 0145

v.

Douglas County Board of Equalization,
Appellee.

Decision and Order Affirming in Part and
Reversing in Part the Determination of the
Douglas County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,061 square foot one-story townhouse, with a legal description of: Brookfield at the Ridges Lot 30 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$358,000 for tax year 2019.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$340,000 for tax year 2019.
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 August 27, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Stanley D. Mason (Taxpayer) was present at the hearing.
8. Scott Barnes 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 assessed value of the land component of the Subject Property is not equalized with the land components of other comparable properties.
17. At the protest hearing, the County Board reduced the total assessed valuation of the Subject Property; however, this action was accomplished by increasing the value of the land component and decreasing the value of the improvement component.
18. The County Appraiser agreed before the Commission that the allocation of a greater value to the land component of the Subject Property resulted in dis-equalization from other comparable properties when looking *solely* at the value of the land component. However, the County Appraiser stated the total assessed valuation for the Subject Property represented market value and was equalized with other comparable properties after the County Board action. The County Appraiser stated that if the land value was decreased, the improvement value would need to be increased to maintain the total

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).

assessed valuation of the Subject Property as determined by the County Board to ensure the property is properly equalized.⁹

19. Real property includes all land and all buildings, improvements, and fixtures.¹⁰ A tax on land and a building or other improvement is “a single indivisible tax, even if the building or improvement is assessed separately from the land.”¹¹ The issue before the Commission is the *total* property assessment; values inappropriately allocated are at most a mere irregularity because there is no effect on the tax that will be levied.¹²
20. The County Appraiser presented the Property Record File (PRF) for the Subject Property and a listing of all valid sales within the Subject Property’s Economic Area.
21. The PRF contains the methodology used by the County Assessor to determine the assessed value of the Subject Property. The County Appraiser stated that this value was determined using an assessment model uniformly applied to all properties in the Subject Property’s neighborhood. The value determined by this model is higher than the value determined by the County Board.
22. The County Appraiser also provided a copy of a report containing the referee’s recommendation and the referee coordinator’s recommendation regarding the Taxpayer’s protest at the county level. This report does not indicate the basis for the allocation determination made by the referee, the support by the coordinator, nor the approval by the County Board.
23. The County Appraiser presented a spreadsheet of the qualified sales of all one-story townhouses in the same neighborhood as the Subject Property. This spreadsheet shows that the per square foot assessed value of the Subject Property after the County Board action is lower than the sales price per square foot of all but one of the 16 qualified sales.
24. The County Appraiser presented a spreadsheet of the assessed values of all one-story townhouses located in the same neighborhood as the Subject Property. This spreadsheet shows that the per square foot assessed value of the Subject Property after the County Board action is the third-lowest of all of the one-story townhouses with the same quality and condition rating as the Subject Property.
25. The Taxpayer alleged that the County Board should have further reduced the value of the Subject Property because the lot backs up to a road and a change in elevation from the back to the front of the lot.
26. The Taxpayer did not present any evidence to enable the Commission to quantify any impact on the value of the Subject Property of the location of the road adjacent to the

⁹ Article VIII, §1(1) of the Nebraska Constitution requires that taxes be levied by valuation uniformly and proportionally. “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.” *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013).

¹⁰ Neb. Rev. Stat. § 77-103(1)-(2) (Supp. 2020).

¹¹ *Phelps Cty. v. Anderson*, 2 Neb. App. 236, 238, 508 N.W.2d 314, 316 (1993).

¹² See Neb. Rev. Stat. § 77-1853, 1854 (Reissue 2018); see also Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

Subject Property or the topography of the lot not considered by the County Assessor's office.

27. The Taxpayer alleged that the value of the improvements should be reduced by the cost to repair damage to wood floors caused by a dishwasher malfunction and sink back up.
28. The Taxpayer did not indicate the amount of damaged flooring, present estimates for the actual cost to repair the damage, nor sufficient information to allow the Commission to determine if the damage would impact the Subject Property's condition rating or the value of the Subject Property.
29. The evidence before the Commission demonstrates that the overall value of the Subject Property as determined by the County Board is equalized with the overall value of other comparable properties.
30. The allocation determination made by the County Board between the land and improvements components was not based on sufficient evidence to justify its stated allocation of value between land and improvements.
31. 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.
32. 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 in part and affirmed in part.

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 2019 is vacated in part and affirmed in part.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 40,700
<u>Improvements</u>	<u>\$299,300</u>
Total	\$340,000

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 2019.

7. This Decision and Order is effective on September 10, 2021.

Signed and Sealed: September 10, 2021

Steven A. Keetle, Commissioner