

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gary T. Gilboy,
Appellant,

Case No: 19R 0147

v.

Decision and Order Affirming the
Determination of the Douglas
County Board of Equalization

Douglas County Board of Equalization,
Appellee.

Background

1. The Subject Property is a residential parcel improved with a one-story townhome, with a legal description of: Residences at West Dodge Station Lot 288 Block 0 50 X 120, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$271,500 for tax year 2019.
3. Gary T. Gilboy (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$230,300 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$271,500 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 May 27, 2021, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Gary T. Gilboy and Mary A. Gilboy were present at the hearing.
8. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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 alleges that the increase in the assessed value from the prior year’s assessment is excessive, unreasonable, and arbitrary and the increase in assessed value was greater than other properties in the neighborhood.
17. The Taxpayer also alleged that the reduction in the assessed value in the subsequent tax year demonstrated that the assessed value for the 2019 tax year was too high.
18. The County Board presented the PRF for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
19. The County Appraisers stated that the market area in which the Subject Property is located was reappraised for tax year 2019, which resulted in increased valuation for the majority of properties in the market area. The County Appraiser stated that the valuation of the Subject Property was protested and reduced by the County Board in prior tax years,

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).

which resulted in the increase in the 2019 assessment of the Subject Property being greater than other properties in the area.

20. The County Appraisers further stated that values were determined using sales from the two years prior to the assessment date for each tax year. The sales used for tax year 2020 indicated a lower valuation for the Subject Property than the sales used for the 2019 assessment.
21. 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 For this reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
22. The Taxpayer purchased the Subject Property in November 2012 for \$222,904.
23. "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 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
24. "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
25. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of other comparable properties on a per square foot basis.
26. "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."¹³
27. The Taxpayer presented tax year 2021 information from the County Assessor's web site regarding the Subject Property and several properties located near the Subject Property. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
29. "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

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).

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 *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

comparable is made more like the subject, its price is brought closer to the subject's unknown value.”¹⁵

30. The information presented by the Taxpayer contains the assessed value history for the properties presented, but the information regarding the characteristics of the properties is for the 2021 tax year.
31. The Taxpayer discussed the finished basement in the neighboring property; however, from the information presented, the Commission cannot determine if that basement finish was a characteristic as of the 2019 assessment.
32. Without the PRF for the comparable properties, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property for the 2019 assessment.¹⁶
33. The Commission cannot find that the properties presented are comparable to the Subject Property for tax year 2019 based on the information presented by the Taxpayer.
34. The information presented by the Taxpayer would, however, appear to indicate that the differences in the assessed values of the properties presented are due to differences in their characteristics such as age, condition, basement finish, garage size, porches, deck, etc.
35. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
36. 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.
37. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 41,700
<u>Improvements</u>	<u>\$229,800</u>

¹⁵ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 6, 2020 (amended on December 18, 2020, as to date of hearing only), 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.*

Total

\$271,500

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 April 1, 2022.

Signed and Sealed: April 1, 2022

Steven A. Keetle, Commissioner