

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kathleen M. Tracy,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 19R 0299 & 20R 0369

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

Background

1. The Subject Property is a residential parcel improved with a 3,378 square foot one and one-half story residence, with a legal description of: Dillons Fairacres Add Lot 3 Block 12 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$415,900 for tax year 2019 and 2020.
3. Kathleen M. Tracy (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$390,000 for tax year 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$415,900 for tax year 2019 and 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on May 28, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Donald J. Tracy was present at the hearing.
8. Scott Barnes 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 alleges that the valuation determination made by the County Assessor’s assessment model is incorrect as it values similar properties differently.
17. The Taxpayer provided the Property Record Files (PRF) and a table listing the characteristics of the Subject Property, the property next door to the Subject Property, and five other parcels that the Taxpayer alleged were comparable to the Subject Property.
18. The Taxpayer alleges that the Subject Property has the highest “base value” of the properties presented in the table and should be valued using the same “base value” for the improvements as the property next door to the Subject Property.
19. The Subject Property is valued as frame construction with masonry veneer while the other properties presented in the table as comparable are frame construction with either wood, vinyl, or aluminum siding.
20. The “base value” in the county’s model should reflect the cost to construct an improvement and the cost to construct a property that is mostly brick veneer is higher than the cost to construct a property that is mostly siding, all else being relatively equal.

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).

21. The difference in per square foot value between the “base cost” used in the County Assessor’s assessment model for the Subject Property and the property next door to the Subject Property is consistent with professionally accepted appraisal practice.⁹
22. The PRF and photographs of the Subject Property show that its classification as frame construction with brick veneer is the appropriate construction type.
23. The Taxpayer’s requested “base value” and valuation methodology fail to account for the differences between the Subject Property and the other properties presented.
24. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of other comparable properties.
25. The PRFs presented by the Taxpayer demonstrate that the assessed values were determined using a uniform methodology and that differences in the assessed values between the properties presented were due to differences in their characteristics and features such as the style, condition, or type of construction (as discussed above, e.g., brick veneer vs. siding).
26. The Taxpayer has not demonstrated that the assessed valuations of the Subject Property and similarly situated property are not equalized.
27. The Taxpayer alleged that the assessed value of the Subject Property is not supported by market sales.
28. The County Board presented the 2019 and 2020 Property Record File (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.
29. The PRF for the Subject Property indicates that a reappraisal for the market area in which the Subject Property is located was performed for tax year 2019. The County Appraisers stated that a reappraisal was done the Subject Property’s neighborhood for tax year 2019 because the assessed values were too far below the sales prices for that year, but in 2020, a reappraisal was not done because the County Assessor’s office found that assessed values determined in the 2019 reappraisal were close enough to the sales prices.
30. The County Board presented a table of residential improved parcel sales showing the sales ratio of the sales prices to the assessed value for all residential improved parcel sales in the same neighborhood as the Subject Property, with a median ratio of 95.27%
31. The Taxpayer presented Market Consistency/Equalization Calculations that he prepared for 2019 and 2020 which determine sales to assessment ratios for various groups of sold properties, which result in sales price to assessment ratios from 84.18% to 95.14%.

⁹ The per square foot base costs used by the County Assessor are lower than the costs published in the Marshall & Swift Residential Cost Handbook closest to the 2019 assessment date but the ratio between the base cost used for brick veneer and vinyl siding by the County Assessor is supported by the base costs for brick veneer and vinyl siding published. See, Marshall & Swift Residential Cost Handbook, page Good -18 (12/2018) or page Good-18-(12-2021).

32. A review of the sales upon which each calculation is based show that the lower the sales price to assessment ratio percentage calculated, the smaller the sample size or the farther from the assessment date the sales used occurred. For example, to determine a sales price to assessment ratio of 86.75%, the Taxpayer used sales as far back as March 2017 and 2018 assessed values, prior to the current reassessment.
33. The Taxpayer's Market Consistency/Equalization Calculations support the 2019 valuation actions taken by the County Assessor and suggest that the 2020 assessment for the Subject Property and other residential properties in the Subject Property's neighborhood are too low.
34. Neither the Taxpayer nor the County Board requested a higher assessed value for the Subject Property for tax year 2020, and the Commission will not therefore consider a higher assessed value than that appealed to the Commission.¹⁰
35. The Taxpayer applied the sales price to assessment ratios he calculated to various sales prices and assessed values but failed to demonstrate how the resulting values supported the Taxpayer's requested value or demonstrated that the assessed value of the Subject Property was not equalized with other comparable properties.
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 determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 and 2020 is:

Land	\$ 67,900
<u>Improvements</u>	<u>\$348,000</u>
Total	\$415,900

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.

¹⁰ See Title 442 Neb. Admin. Code Ch. 5, § 016.02A (6/21).

5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2019 and 2020.
7. This Decision and Order is effective on April 13, 2022.

Signed and Sealed: April 13, 2022

Steven A. Keetle, Commissioner