

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Troy B. Carlson,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case No: 19R 0301

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

Background

1. The Subject Property is a residential parcel improved with a 1,136 square foot one story residence, with a legal description of: Pasewalks Third Addition Lot 11 Blk 3, Norfolk, Madison County, Nebraska.
2. The Madison County Assessor (the County Assessor) assessed the Subject Property at \$105,086 for tax year 2019.
3. Troy B. Carlson (the Taxpayer) protested this value to the Madison County Board of Equalization (the County Board) and requested an assessed value of \$54,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$101,605 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 21, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
7. Troy B. Carlson was present at the hearing.
8. Jeff Hackerott, the Madison County Assessor (the County Assessor) 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 was too high due to incorrect characteristics listed by the County Assessor.
17. The Taxpayer did not present the Property Record File (PRF) for the Subject Property for tax year 2019. Instead, the Taxpayer presented information from the County Assessor’s web site regarding the Subject Property for tax year 2020.
18. The Taxpayer stated that the Subject Property had two bedrooms rather than three and one and three quarters baths rather than two.
19. The web information regarding the Subject Property does not show how these characteristics are factored into the determination of value for the Subject Property to allow the Commission to determine if an adjustment for these characteristics would impact the county’s assessment of the Subject Property.
20. The Taxpayer did not produce any sales or other information that would allow the Commission to quantify the impact of these characteristics on the market value 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).

21. The Taxpayer alleged that the Subject Property is overvalued relative to other comparable properties.
22. The Taxpayer presented a list of six properties near the Subject Property and information from the County Assessor's web site regarding these properties for tax year 2019 that show lower assessed values for these six properties than the assessed value of the Subject Property.
23. The County Assessor stated that there was a change in the assessment software and models used between the 2019 and 2020 tax years. The information from the County Assessor's web site regarding the Subject Property and the six nearby parcels presented by the Taxpayer support the County Assessor's statements and show that different characteristics are tracked from one methodology to the other.
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
25. "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."¹⁰
26. The information presented by the Taxpayer demonstrates that the properties presented have differences in age, quality, condition, type of construction, square footage, basements, garage, and brick veneer. Without the PRF for the Subject Property or the comparable properties for the tax year in question, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property.¹¹
27. 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.
28. 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.

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on February 26, 2021, 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 10,444
<u>Improvements</u>	<u>\$ 91,161</u>
Total	\$101,605

3. This Decision and Order, if no further action is taken, shall be certified to the Madison County Treasurer and the Madison 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 January 7, 2022.

Signed and Sealed: January 7, 2022

Steven A. Keetle, Commissioner