

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shane J. Placek,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 19R 0303

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

Background

1. The Subject Property is a lakefront residential parcel improved with a 2,728 square foot one story residence, with a legal description of: Lake Ventura Sub PT Lot 85, Dodge County, Nebraska.
2. The Dodge County Assessor (the County Assessor) assessed the Subject Property at \$681,071 for tax year 2019.
3. The Taxpayer protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$451,521 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$681,071 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 September 17, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Shane J. Placek (the Taxpayer) was present at the hearing.
8. Paul Vaughn, Deputy Dodge County Attorney, Debbie Churchill, Dodge County Assessor, and Mitch Hart, Dodge County Appraiser 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 alleged that the Subject Property is being assessed at a higher per-square-foot value than other comparable properties.
17. “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.”⁹
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
19. “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.”¹¹
20. The Taxpayer presented a group of nine properties located in the same subdivision as the

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

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007)

Subject Property and requested that the Subject Property be assessed at the average assessed value of these other properties.

21. The Taxpayer did not present the Property Record Files (PRF) for any of the nine properties that the Taxpayer alleged were comparable to the Subject Property. Without the details contained in the PRF of these properties, the Commission is unable to determine the contributions of the various amenities or features of the properties, such as type of construction, size, quality, condition, basement finish, etc., to the value of the improvements.¹²
22. The County Board presented information about the Taxpayer's nine alleged comparables. This information indicated that these properties are significantly older than the Subject Property,¹³ are of different styles of construction (one story, two story 1.5 story, and split level), and have above ground square footage ranging from 1,144 square feet to 4,007 square feet.
23. From the information presented, the Commission is unable to determine if the nine properties are comparable to the Subject Property or what adjustments, if any, could be made to these properties to make them comparable to the Subject Property.
24. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska statutes.¹⁴ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁵
25. The Taxpayer's opinion of value was determined by averaging the unadjusted per-square-foot assessed values of nearby properties. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the subject property as defined by statute.¹⁶ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as a mass appraisal method would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
26. The County Board presented a list of properties that it alleged were comparable to the Subject Property, but it did not present the PRF for any of these properties. Without the details contained in the PRF, the Commission is unable to determine the contributions of the various amenities or features of the properties, such as type of construction, size, quality, condition, basement finish, etc., to the value of the improvements.¹⁷

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 12, 2020, includes the following:

NOTE: *Copies of the County's Property Record File for any parcel 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.*

¹³ The nine other properties were built in the 1970s and 1980s while the Subject Property was built in 2003.

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 12, 2020, includes the following:

27. The information regarding the County Board's alleged comparables, however, does show that the per-square-foot value generally increased with the quality of construction and amenities such as amount of basement finish, garage square footage, or plumbing fixtures.
28. The Taxpayer alleged that the two of the County Board's comparables that were closest to the Subject Property were not in a flood plain while the Subject Property was and that therefore the assessed value of the Subject Property should be reduced.
29. The Taxpayer did not present evidence to show the assessed value of the land component of the County Board's comparables to indicate the impact of the location of a parcel in a flood plain on the assessed value of a property. The Taxpayer did not provide any sales information or other information to quantify the impact of flood plains on the market value of a parcel of property in the area of the Subject Property.
30. The Taxpayer presented another list of four properties that were in the same subdivision as the Subject Property that were constructed in the 1990s.
31. The Taxpayer did not present the PRF for any of these four additional properties. Without the details contained in the PRF of other comparable properties, the Commission is unable to determine the contributions of the various amenities or features of the properties, such as type of construction, size, quality, condition, basement finish, etc., to the value of the improvements.
32. The Taxpayer has failed to demonstrate that similarly situated properties were assessed at materially different levels of value than the Subject Property.
33. The Taxpayer alleged that the value of the land component of the Subject Property was not valued in proportion to the amount of shoreline of parcels located in the Lake Ventura Subdivision.
34. The County Assessor testified that lake lots are not valued on the basis of lake frontage. The sales of lake lots do not indicate that the sales prices are proportional to the amount of lake frontage, but rather to the size of the lot.
35. The Taxpayer did not present any sales information to support his assertion that the assessed values of lakefront lots in the Lake Ventura Subdivision should be proportional to the amount of shoreline.
36. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the large deck on the Subject Property.
37. The Taxpayer presented pictures of portions of the deck, stairs, and patio of the Subject Property.
38. The Taxpayer presented two proposals to replace the deck and the patio underneath the deck for between \$127,525 and \$94,246.62. The Taxpayer alleged that the assessed value of the Subject Property should be reduced to account for the cost of replacing the deck.

NOTE: Copies of the County's Property Record File for any parcel 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.

39. The County Assessor stated that the condition of the deck and patio were accounted for when determining the portions of the assessed value contributed by the deck and patio.
40. The Count Assessor stated that the contribution of value for the deck and patio for the Subject Property was approximately \$10,000, to account for the condition of these amenities.¹⁸
41. The Taxpayer has not demonstrated that the assessment failed to account for the condition of the deck and patio of the Subject Property.
42. 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.
43. 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 | \$154,548 |
| <u>Improvements</u> | <u>\$526,523</u> |
| Total | \$681,071 |

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 24, 2021.

Signed and Sealed: September 24, 2021

Steven A. Keetle, Commissioner

¹⁸ The County Board presented a PRF for the Subject Property that purported to be for the 2019 assessment. However, the calculation of values shown in this document does not match the assessed value of the Subject Property for any of the tax years listed in the valuation. Therefore, this document was given little weight by the Commission, and the Commission proceeded as if neither party presented the PRF for the Subject Property.