

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joseph L. Beister,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0321

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

Background

1. The Subject Property is a residential parcel improved with a 1,260 square foot raised ranch style home, with a legal description of: Armbrusts Rockbrook Replat 1 * Lot 1 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$137,900 for tax year 2019.
3. Joseph L. Beister (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 \$137,900 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 26, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Joseph L. Beister 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 increase in the value from the prior year’s values was too great and that it was unreasonable that the County Board lowered the assessed value in the prior assessment year but not the current assessment year.
17. 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
18. The Taxpayer alleged that the Subject Property is not sale worthy and that its condition should result in a lower assessed value.
19. The Taxpayer discussed the condition of the windows, roof, garage doors, HVAC, and décor of the Subject Property.
20. The County Board presented the Property Record File (PRF) for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of 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 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).

Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.

21. The County Appraiser stated that the assessed value of the Subject Property was assessed based on its features as shown in the PRF, including the condition of the Subject Property.
22. The Subject Property has a condition rating of Fair, which reflects the condition of the Subject Property as set forth by the Taxpayer and inspection notes found in the PRF.
23. The County Board presented a table of the assessed value of all raised ranch properties with the same quality rating as the Subject Property in the neighborhood, which indicated that the Subject Property has the lowest condition rating in the neighborhood and one of the lowest assessed values per square foot.
24. The Taxpayer alleged that the assessed value of the Subject Property was negatively impacted by the condition of nearby properties.
25. The Taxpayer stated that a property located a few houses north of the Subject Property had an overgrown back yard. The Taxpayer did not produce information that would quantify any impact the presence of an overgrown backyard on a nearby property would have on the market value of the Subject Property.
26. The Taxpayer discussed several properties recently sold or recently listed for sale in the area that he alleged were comparable to the Subject Property and indicated the Subject Property was overvalued.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
28. “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.”¹²
29. The Taxpayer did not present the PRF for any of the properties discussed for equalization purposes. 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.¹³

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation* 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties* 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 30, 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.*

30. The County Appraiser stated that the properties presented as sales or sales listings by the Taxpayer were not located in the same neighborhood as the Subject Property and would be assessed differently based on their locations.
31. 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.
32. 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	\$ 33,600
<u>Improvements</u>	<u>\$104,300</u>
Total	\$137,900

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.
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 August 24, 2021.

Signed and Sealed: August 24, 2021

Steven A. Keetle, Commissioner