

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Errol R. Waits,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0323

Decision and Order Reversing the
Determination of The Douglas
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 2,125 square foot condominium, with a legal description of: Twin Towers Condominium Lot S7E Block 0 Units S7D & S7E 1.89%, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$304,200 for tax year 2019.
3. Errol R. Waits (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 \$304,200 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. Errol R. Waits 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 assessed value of the Subject Property should be reduced because it was valued at a higher percentage of value than other condominium properties in the same building.
17. The Taxpayer presented charts of sales prices of condominium properties in the same building as the Subject Property
18. 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 Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
19. “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.”⁹

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 *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

20. The information regarding the sales discussed shows that the ratio of the sales price to the assessed value for each sale is different, some being higher than the ratio of the Subject Property and some lower.
21. The assessment methodology presented by the County Board demonstrates that the same model is being applied uniformly to determine the assessed values of all condominium properties in the same building as the Subject Property based on their characteristics.
22. The Nebraska Supreme Court has concluded that mathematical precision in assessment valuations and equalization is impossible.¹⁰
23. The Taxpayer has not demonstrated that the assessed value placed on the Subject Property, when compared to the valuation placed on other similar property, is “grossly excessive.”¹¹
24. The Taxpayer argued that the Subject Property is being assessed at a different amount per square foot than other substantially similar property.
25. The Subject Property is composed of two formerly separate units (7D & 7E). The Taxpayer stated that units 7F & 7G have the same floorplan and balconies as the Subject Property but have not been combined.
26. The Taxpayer has inspected the interior of units 7F & 7G and discussed the construction, condition, and amenities found in each of those units as well as the construction, condition, and amenities found in the Subject Property.
27. Based on the information presented by the Taxpayer, the Commission finds that these three properties were all remodeled at around the same time with the same quality of materials and construction and have similar amenities.
28. The County Assessor’s records have the Subject Property rated as good quality of construction and good condition while units 7F & 7G are rated as average quality of construction and average condition. This difference in quality and condition rating results in a higher assessed value per square foot for the Subject Property than units 7F & 7G, which are substantially similar to the Subject Property in terms of age, location, quality, condition, and amenities.
29. The Subject Property is assessed at \$143 per square foot while the combined units 7F & 7G are assessed at \$118 per square foot.
30. “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.”¹²
31. The Taxpayer has demonstrated that the valuations of similarly situated properties were set at materially different levels.
32. The Commission finds and determines that the equalized value of the Subject Property for tax year 2019 is \$250,750.¹³

¹⁰ *LeDioyt v. County of Keith*, 161 Neb. 615, 622, 74 N.W.2d 455, 461 (1956).

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

¹² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹³ 2,125 square feet × \$118 per square foot = \$250,750.

33. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
34. The Taxpayer has 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is: \$250,750.
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