

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Timothy J. Odorisio,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0449

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 3,341 square foot one and one-half story residence, with a legal description of: Deer Creek Lot 101 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$576,400 for tax year 2019.
3. Timothy J. Odorisio (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 \$475,000 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 March 31, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Timothy J. Odorisio was present at the hearing.
8. Kurt Skradis 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 alleged that the percentage increase in the assessed value of the Subject Property from the prior year was too large an increase.
17. The Taxpayer presented a list of properties that included their percentage of assessed valuation increase from the prior year and their purchase price where applicable. This list does not contain any other information about the properties, such as style of construction, age, quality, condition, basement size, basement finish, garage size, or other amenities such as fireplaces, stone or brick work, decks, patios or swimming pools. The percentage increase in value of the Subject Property is neither the highest nor the lowest of the percentage changes listed.
18. The Taxpayer did not present the Property Record File (PRF) for any of these parcels for the Commission to determine their characteristics or comparability to the Subject Property.
19. 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).

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. The County Board's list of valid sales include the sale of the Subject Property.

20. A review of the properties listed by the Taxpayer shows that one of the sales listed is also found in the County Board's list of valid sales. This property sold four months prior to the Subject Property, which has the same style of construction, quality, condition, and similar square footage. This property's assessed value increased at a percentage twice that of the Subject Property.
21. Further, the courts in Nebraska have held that the assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ A prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
22. The Taxpayer alleged that the Subject Property should be assessed nearer to its purchase price.
23. The Taxpayer purchased the Subject Property in July 2017 for \$412,000.
24. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."¹¹ "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."¹²
25. The three other recent valid sales of one and one-half story properties in the same neighborhood as the Subject Property were for significantly more than the Subject Property on both an aggregate and per square foot amount, even though they are of a similar size and have the same quality and condition ratings.
26. The County Appraiser stated that, based on the characteristics of the Subject Property and the recent sales in the area, the per square foot assessed value was a better representation of the market value of the Subject Property than the purchase price.
27. The County Appraiser further stated that the per square foot value was the most relevant way to compare assessed values of residential parcels in the Subject Property's area.

⁹ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ *DeVore, Affiliated Foods*, see also *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

¹¹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹² *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

28. The County Appraiser presented a list showing the per square foot assessed values of all one and one-half story properties in the same neighborhood of the Subject Property. This list shows that after the County Board action, the per square foot assessed value of the Subject Property is below the median for the neighborhood, even though the Subject Property is directly adjacent to a golf course, has a finished walkout basement, a quality rating of very good, and a condition rating of good.
29. The information presented to the Commission does not support the Taxpayer's allegation that the 2017 purchase price of the Subject Property is representative of its market value for tax year 2019.
30. 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.
31. 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.

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	\$ 39,000
<u>Improvements</u>	<u>\$436,000</u>
Total	\$475,000

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 November 24, 2021.

Signed and Sealed: November 24, 2021

Steven A. Keetle, Commissioner