

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Marilyn T. Kaplan Revocable Trust,
Marilyn Kaplan, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0452

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 4,797 square foot two story residence, with a legal description of: Glen Oaks Add, Lot 1 Block 3 -Ex N 17 Ft for Rd-, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$850,500 for tax year 2019.
3. The Marilyn T. Kaplan Revocable Trust (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 \$850,500 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. David P. Wilson, of Walentine O’Toole, LLP, was present at the hearing for the Taxpayer.
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

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 valuation increases from prior years’ assessed values were unreasonable and arbitrary.
17. 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
18. The Taxpayer alleged that the assessed value of the Subject Property was not uniform and equalized with the value of another comparable property on a per square foot basis.
19. Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results must be correlated to show

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).

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 *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).

uniformity.¹¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹²

20. The Taxpayer presented the Property Record File (PRF) for the Subject Property and a property located on Oak Circle (the Oak Circle Property) which the Taxpayer alleged was similar to the Subject Property.
21. The Subject Property and the Oak Circle Property are both two story residential parcels with quality ratings of very good and condition ratings of average. The differences in per square foot value are due to differences in their other characteristics. For example, the Subject Property has more above ground living area. Because of this size difference, the Subject Property's above ground living area has a lower base value per square foot, but the overall value is higher because the Subject Property has over 1,300 more square feet of above ground living space. The Subject Property also has one more fireplace, a larger garage, and is six years newer than the Oak Circle Property, resulting in less physical depreciation.
22. The Taxpayer has not demonstrated that the assessed value of the Subject Property is not equalized with similar properties.
23. The Taxpayer presented an appraisal report for the Subject Property which was prepared by an independent appraiser and certified as being performed according to professional standards (the Taxpayer Appraisal).
24. The Taxpayer Appraisal uses the sales comparison approach to determine that the value of the Subject Property was \$720,000 as of May 2020.
25. The Taxpayer alleges that the value determination for the Subject Property in May 2020 is representative of its value as of the January 1, 2019, assessment date at issue in this appeal.
26. To support this allegation, the Taxpayer presented the assessment history of the Subject Property, showing that the County Assessor assessed the Subject Property at the same value for tax years 2019, 2020 and 2021.¹³
27. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹⁴
28. Based on the information presented, the Commission finds and determines that the actual value of the Subject Property as of the assessment date was \$720,000.
29. 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.

¹¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹³ The Commission notes that the 2021 valuation available at the time was a preliminary valuation and not final as of the date of the hearing.

¹⁴ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

30. 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: \$720,000.
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