

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Diana M. Whitman,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0459

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 1,610 square foot ranch style residence, with a legal description of: Balla Machree Lot 34 Block 0 128 x 170, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$228,400 for tax year 2019.
3. Dana M. Whitman (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 \$200,000 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. Diana M. Whitman 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 assessed value of the land component was not equalized with other comparable properties
17. The County Board presented the Property Record File (PRF) for the Subject Property.
18. The Taxpayer did not present the PRFs for the parcels that she alleged were comparable to the Subject Property but rather discussed the size of the parcels that she alleged were comparable to the Subject Property and their assessed value.
19. The County Appraiser stated that the assessed value of the properties discussed by the Taxpayer were negatively impacted due to their location adjoining Pacific Street, a major east/west road.
20. The Subject Property is not located on Pacific Street and therefore does not have a negative traffic factor applied.
21. The Taxpayer alleged that another similar property did not have the same land value as the Subject Property on a per square foot basis.

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).

22. Professionally accepted appraisal practice holds that: “Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”⁹
23. Further, “A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land.”¹⁰
24. The assessed land value information presented by the Taxpayer is consistent with professionally accepted appraisal principles noted above in that, as the size of the residential lots increase, the total value increases and the per acre values decreases.
25. The Taxpayer alleged that the value of the Subject Property should be reduced due to the property being located on an unimproved street.
26. The Taxpayer presented pictures of the unimproved city street on which the Subject Property is located.
27. The County Appraiser stated that, in addition to the section of 92nd Street that the Subject Property is on, there are other unimproved streets in the area. The County Assessor’s office was unable to determine a difference in value based on a property’s location on an unimproved street in the area of the Subject Property.
28. The Taxpayer did not present any information to quantify the impact of the unimproved street on the value of the Subject Property.
29. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the improvements.
30. The Taxpayer alleged that the windows were the original 1952 windows and the driveway was significantly cracked and damaged from vehicular traffic using the end of the driveway rather than the unimproved street. The Taxpayer further alleged that the roof needed to be replaced.
31. The Taxpayer presented pictures of the windows and driveway and stated that the roof was redone in 2020, after the relevant assessment date for this appeal.
32. The PRF for the Subject Property indicated that the condition rating of the Subject Property for tax year 2019 was fair. Notes included in the PRF indicate that the fair

⁹ Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

¹⁰ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

condition rating was due to the condition of the roof, windows, siding, and dated interior observed by the County Assessor's office during a 2017 inspection.

33. The County Appraiser indicated that based on the PRF, photographs, and information presented by the Taxpayer, in his opinion, the fair condition rating was accurate.
34. Considering the photographs and statements of the Taxpayer regarding the interior and exterior of the Subject Property, a condition rating of fair appears to be an appropriate condition rating for the Subject Property.
35. The information presented by the Taxpayer regarding the necessary repairs and condition of the Subject Property support the County Assessor's determination of fair condition.
36. 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.
37. 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	\$103,400
<u>Improvements</u>	<u>\$ 96,600</u>
Total	\$200,000

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 December 10, 2021.

Signed and Sealed: December 10, 2021

Steven A. Keetle, Commissioner