

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kurt A. Davey,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0460

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 2,582 square foot two and one-half story residence, with a legal description of: Happy Hollow Add Lot 9 Block 15 SW 50 Ft Lt 8 & NE 20 Ft 70 X 114, Omaha, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$566,800 for tax year 2019.
3. Kurt A. Davey (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 \$566,800 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 April 2, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kurt A. Davey 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 alleges that the increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary and the increase in assessed value was greater than other properties in the neighborhood.
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 Additionally, the differences in the changes of the assessment of the Subject Property and other properties in the neighborhood is only relevant to the current year’s assessment if the differences resulted in values that were not equalized for the current assessment year.
18. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed value of other comparable properties 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).

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).

19. “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.”¹¹
20. The Taxpayer presented information from the County Assessor’s web site regarding the Subject Property and three properties located near the Subject Property. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.
21. The County Board presented the PRF for the Subject Property, which contains information about the characteristics of the Subject Property, and 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, to support the per square foot assessed values of the Subject Property.
22. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
23. “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.”¹³
24. The information presented by the Taxpayer demonstrates that the properties presented have differences in quality, condition, square footage, basement size and finish, and types and size of garage. For example, the Subject Property is the only one of the four properties that has a quality rating of very good, and it has the largest detached garage.
25. Without the PRF for the comparable properties, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property.¹⁴
26. The Taxpayer alleged that the quality and condition ratings for the Subject Property and the other properties presented should not be different.
27. The County Appraiser stated that the neighborhood of the Subject Property was reappraised for the 2019 assessments and that the last full reappraisal had been done in 2007. Additionally, the valuation history of the Subject Property indicated that its assessment was changed in 2010 due to building permits filed.
28. The Taxpayer did not present information regarding the Subject Property or the other properties to show that the determinations of quality or condition made by the County Assessor’s office were unreasonable or arbitrary.

¹¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on February 18, 2021, includes the following:

NOTE: *Copies of the County’s Property Record File for any property 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.*

29. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
30. The Taxpayer alleged that the Subject Property shouldn't be the highest or lowest valued property in the neighborhood but rather closer to the average value per square foot.
31. The Taxpayer's requested value was determined by averaging the assessed values of the other properties, and then applying the averaged per square foot values to the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.¹⁵ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal method would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
32. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."¹⁶
33. Additionally, while the assessments for all of the properties in the Subject Property's neighborhood were not given to the Commission in this appeal, the list of valid sales presented by the County Board shows that the per square foot assessed value of the Subject Property is neither the highest nor the lowest.
34. 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.
35. 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	\$ 67,800
<u>Improvements</u>	<u>\$499,000</u>
Total	\$566,800

¹⁵ See Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008).

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