

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Stephen J. Eytalis,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 19R 0462 & 20R 0596

Decision and Order Affirming the
Determinations of the Douglas
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,163 square foot residence and a 300 square foot outbuilding, with a legal description of: West Omaha Addition Replat 3* Lot 1 Block 0 50 X 165, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$172,000 for tax year 2019 and \$318,100 for tax year 2020.
3. Stephen J. Eytalis (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessed values for tax years 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$172,000 for tax year 2019 and \$318,100 for tax year 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 10, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Aimee Lowe, Attorney and Stephen J. Eytalis were present at the hearing.
8. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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, 759 N.W.2d 464, 473 (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 purchased the Subject Property in August of 2017 for \$300,000.
17. The Taxpayer alleged that the purchase price of the Subject Property included the price of artwork located on the property that the County Assessor did not account for.
18. The Taxpayer produced pictures of several pieces of outdoor artwork located on the grounds Subject Property but did not present information regarding the value of these pieces for the Commission to consider.
19. The County Board presented the Form 521 Real Estate Transfer Statement for the sale of the Subject Property in 2017, which was signed by the Taxpayer and indicated that the \$300,000 purchase price did not include any non-real property.
20. The Taxpayer did not provide information to show the amount that the purchase price of the Subject Property could be reduced due to the value of artwork located on the Subject Property.
21. The County Board presented the 2109 and 2020 Property Record Files (“PRFs”) for the Subject Property. These PRFs contain information about the characteristics of the Subject

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).

Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.

22. The sales information presented by the County Board indicates that the Taxpayer's purchase of the Subject Property was treated as a valid sale and was one of the sales used in the determination of assessed values for tax year 2019. The sales information for tax year 2020 indicates that the sale of the Subject Property was no longer included in the list of valid sales used in the determination of assessed value for tax year 2020.
23. The County Appraisers stated that due to the age of the sale the sale of the Subject Property was not considered when determining assessed values or measuring the level or quality of assessments for any portion of the county.
24. The Taxpayer has not demonstrated that the sales price of the Subject Property alone was used to set its assessed value for tax years 2019 or 2020.
25. The Taxpayer alleged that the characteristics of the Subject Property used to determine value by the County Assessor's office are incorrect, including but not limited to age, quality, condition, bedrooms, bathrooms, and status of the outbuilding.
26. The Taxpayer discussed the characteristics of the Subject Property and included photographs of the interior and exterior portions of the property. The Taxpayer stated that the quality and condition ratings for the Subject Property the number of full baths were incorrect and that the outbuilding should not be classified as a guest house because it did not have any running water or plumbing.
27. The Taxpayer argues that the referee's comments made in the 2020 protest report support the Taxpayer's contention that the characteristics of the Subject Property as determined by the County Assessor are incorrect.
28. The County Appraisers discussed the inspections of the Subject Property that were made by the County Assessor's office, the notes regarding the features of the Subject Property in the PRF, how the County Assessor's office classifies bathrooms (i.e. a bathroom with a sink, toilet and tub and a bathroom with a sink toilet and shower are both considered full baths). The County Appraisers further stated that the PRF shows that while the outbuilding is called a guesthouse it is not being assessed for any plumbing fixtures which would be necessary for running water.
29. The PRF indicates that the original 1907 slab foundation for the home on the property remains the rest of the original structure was removed, and a new home was built on that foundation in 2008, and that therefore the structure is given an effective age of 2008.
30. The County Board further presented the MLS listings for the Subject Property prior to the 2017 sales including photographs of the interior and exterior of the Subject Property.
31. The Taxpayer alleges that the county is using only the information that presents the Subject Property in its best light, overstating the value of the Subject Property.

32. Reviewing all of the information presented to it by the Taxpayer and the County Board the Commission finds that the Taxpayer has not demonstrated that the determination of the characteristics of the Subject Property made by the County Assessor and utilized by the County Board were unreasonable, arbitrary, or incorrect.
33. The Taxpayer alleged that the amount of the increase in the assessed values of the Subject Property from the 2019 to the 2020 assessed value was too great.
34. The County Appraisers stated that the sales price to assessment ratio for all residential properties in the area was too low requiring a reassessment of the area for tax year 2020.
35. 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
36. The Taxpayer alleged that the assessed value of the Subject Property was much higher than any other assessed value or sale price in the area.
37. The Taxpayer presented tables of assessed values and sales prices for properties in the area of the Subject Property.
38. The Taxpayer did not present the PRFs for the properties listed on the tables of sales prices and assessed value. Accordingly, the Commission cannot see the basis for the determination of assessed value or compare the sold properties characteristics to the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayer charts to the Subject Property.¹¹
39. Reviewing the information available regarding sales presented by the Taxpayer and the County indicate that the Subject Property is much newer than other sold properties in the area and has a higher quality rating than other sold properties in the area. These two characteristics may result in higher assessed values than other properties in the area.
40. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
41. "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

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).

¹¹ 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.*

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).

42. Without the PRFs of the purported comparable properties, the Commission is without sufficient information to determine whether any of the properties presented by the Taxpayer are comparable to the Subject Property.
43. The Taxpayer has not demonstrated that the assessed value is higher than other comparable properties.
44. The Taxpayer has not demonstrated that the assessed value of the Subject Property is excessive in relation to the assessed values of other nearby properties.
45. 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.
46. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 is:

Land	\$ 19,700
<u>Improvements</u>	<u>\$152,300</u>
Total	\$172,000

3. The taxable value of the Subject Property for tax years 2019 is:

Land	\$ 19,700
<u>Improvements</u>	<u>\$298,400</u>
Total	\$318,100

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.

7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective on August 19, 2022.

Signed and Sealed: August 19, 2022

Steven A. Keetle, Commissioner