

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael L. Smart,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0464

**DECISION AND ORDER
REVERSING THE DECISION OF THE
DOUGLAS COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is an improved residential parcel with a legal description of Southbridge Condo Prop Reg Lot 402 Block 0 Irreg 0.0351081% Gar 20, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$129,600 for tax year 2019.
3. Michael L. Smart (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$129,600 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 July 27, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael L. Smart was present at the hearing for the Taxpayer.
8. Kurt Skradis of the Douglas County Assessor/Register of Deeds Office 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

1. The Subject Property is a condominium unit located in a building at 3702 Jackson Street in Omaha, Nebraska. The Subject Property is a central unit with a covered concrete balcony and an associated detached garage.
2. The Taxpayer alleged that the assessed value of the Subject Property is higher than market value.
3. The Taxpayer purchased the Subject Property in 2015 for \$85,000.
4. The County Board presented a list of valid condominium sales which included recent sales of parcels in the same building as the Subject Property.
5. The sales information presented indicates a significant increase in sales prices of condominium properties between 2015 and 2019, the tax year at issue.
6. The Taxpayer has not demonstrated that the assessed value of the Subject Property is greater than market value.
7. The Taxpayer also alleges that the assessed value of the Subject Property is not equalized with the assessed values of other comparable properties.

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).

8. The Taxpayer presented the Property Record Files (PRF) for five other parcels in the same building as the Subject Property.
9. The Taxpayer presented photographs of the interiors of the Subject Property and two other properties located in the same building as the Subject Property.
10. The Commission finds that the Subject Property is substantially similar to the two parcels located directly below the Subject Property. The Subject Property, however, was given a higher condition rating than the parcels below it, which resulted in the Subject Property being assessed at a higher value per square foot.
11. “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.”⁹
12. The equalized value of the Subject Property should be the same as the assessed values of the properties located on the next two floors directly below the Subject Property.
13. The Commission finds and determines that the equalized value of the Subject Property is \$95,800 for tax year 2019.
14. 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.
15. 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:

Land	\$ 2,100
<u>Improvements</u>	<u>\$93,700</u>
Total	\$95,800

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.

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

7. This Decision and Order is effective on March 19, 2021.

Signed and Sealed: March 19, 2021

Steven A. Keetle, Commissioner