

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kevin C. Ruff,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0469

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 2,780 square foot two story home, with a legal description of: Evanston Add Lot 26 Block 7 LT 25 & S 5 Ft 72.5 X 130.85, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$524,500 for tax year 2019.
3. Kevin C. Ruff (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 \$524,500 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 April 1, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kevin C. Ruff 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

1. 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.
2. 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.
3. 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).

4. “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
5. The Taxpayer presented information from the County Assessor’s web site regarding the Subject Property and ten other properties on the same block as the Subject Property. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.
6. 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.
7. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
8. “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. The information presented by the Taxpayer demonstrates that the properties presented have differences in style of construction, age, quality, condition square footage, basement size and finish, and types and size of garage. 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
10. For example, the Subject Property is one of four properties that has a quality rating of very good, and it is the only very good quality property that is a two story property with a condition rating of good. All of the other very good quality properties have a lower condition rating of average.
11. The County Appraiser stated that two and one-half story properties and one and one-half story properties would not be comparables for the Subject Property. The County Appraiser stated that age and exterior style (i.e. masonry, stucco, wood siding) would impact the values of the properties near the Subject Property, but without the PRFs for these properties, he could not state how much they would impact values.

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.*

12. The Taxpayer alleged that the quality and condition ratings for the Subject Property and some of the other properties presented should be different.
13. The Taxpayer did not present information regarding these properties to show that the determinations of quality or condition made by the County Assessor's office were unreasonable or arbitrary.
14. Based on the information presented to the Commission, the properties presented by the Taxpayer are not comparable to the Subject Property.
15. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
16. The Taxpayer stated that the only access from the garage of the Subject Property and three other properties to 57th Street was via the alley and alleged that the alley-only access reduced the value of the Subject Property.
17. The Taxpayer did not produce any information to quantify any impact the alley access had on the value of the Subject Property.
18. 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.
19. 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	\$ 80,400
<u>Improvements</u>	<u>\$444,100</u>
Total	\$524,500

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