

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paul T. Bellinger,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0548

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 1,596 square foot ranch style residence, with a legal description of: Bridgefords Rockbrook Add Lot 7 Block 1, S 116 ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$180,000 for tax year 2019.
3. Paul T. Bellinger (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 \$180,000 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 August 24, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
8. Scott Barnes of 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 Subject Property should be lower due to hail damage to the roof of the residence located on the Subject Property.
17. The County Board presented the Property Record File for the Subject Property, which contains information about the characteristics of the Subject Property.
18. The County Assessor stated that the condition rating of fair for the Subject Property accounted for the condition of the roof as described by the Taxpayer.
19. The Taxpayer stated that a truck had driven through the fence in front of the Subject Property and that there had been a gas leak north of the Subject Property, which negatively impacted the value of the Subject Property.
20. The Taxpayer did not present documentation regarding any damage to the fence in front of the Subject Property or the presence of a gas leak as of the assessment date.
21. The PRF indicates that when the County Assessor’s Office inspected the Subject Property it was unable to find or otherwise identify a gas leak on or near the Subject Property.

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. The Taxpayer further alleged that the proximity of the Subject Property to West Center Road and the speed of traffic, truck traffic, trash, and accidents along that road negatively impacts the value of the Subject Property. The Taxpayer further alleged that the changing of the timing of the traffic signals along West Center Road negatively impacts the assessed value of the Subject Property.
23. The Taxpayer alleges that the presence of a condemned property near 108th street and West Center Road negatively impacts the value of the Subject Property.
24. The Taxpayer did not offer information to establish the impact of external factors related to West Center Road or nearby condemned properties that would allow the Commission to quantify their impact on the value of the Subject Property.
25. The Taxpayer made additional requests, including but not limited to requesting that the Commission order the creation of a charitable trust for all properties that receive a valuation notice, the Commission order the rezone the Subject Property, and that the Commission regulate use of city streets and the local natural gas service. These actions are outside the jurisdiction and authority of the Commission.
26. “Jurisdiction is the inherent power or authority to decide a case.”⁹ The Commission only has that authority which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.¹⁰
27. Any request for relief that is outside the jurisdiction of the Commission must be denied.
28. 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.
29. 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	\$ 20,000
<u>Improvements</u>	<u>\$160,000</u>
Total	\$180,000

⁹ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹⁰ *See, e.g., Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).

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 June 17, 2021.

Signed and Sealed: June 17, 2021

Steven A. Keetle, Commissioner