

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dixie D. Bettini,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0550

Decision and Order Reversing the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is a residential property improved with a 2,510 square foot multi-level residence, with a legal description of: Royal Wood Estates Rep II* Lot 1 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$257,000 for tax year 2019.
3. Dixie D. Bettini (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 \$238,000 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. Dixie D. Bettini and Christopher Bettini were 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 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 Taxpayer presented a chart showing the assessed value of the Subject Property and six other properties near the Subject Property as well as the differences in the percentage increase in assessed values in the current year as well as the five previous assessment years.
18. 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 Subject Property and other properties in the neighborhood is only relevant to the current year’s

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).

assessment if the differences resulted in values that were not equalized for the current assessment year.

19. The Taxpayer did not present the Property Record File (PRF) for any of the other properties on the chart to allow the Commission to determine the comparability of these properties or the basis for their valuations.
20. The County Board presented the PRF for the Subject Property as well as 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 and the other properties presented.
21. The County Appraiser stated the neighborhood of the Subject Property was reappraised for the current tax year and that, in addition to the differences in features of the properties, one factor in the difference in the percentage increase between the Subject Property and the other properties contained on the chart may be that the value of the Subject Property was reduced by the County Board in 2017 and that assessment was carried forward to the 2018 assessment year.
22. The County Appraiser stated that the assessed value of the Subject Property was assessed based on its features as shown in the PRF.
23. The County Board presented a table of the assessed value of all multi-level properties with the same quality rating as the Subject Property in the neighborhood, which indicated that the Subject Property has the lowest assessed value per square foot.
24. The Taxpayer discussed basement finish in the Subject Property and alleged that the condition of the finish was not being properly considered.
25. The County Appraiser stated that the basement finish was being assessed as fair finish, which indicates a lower level of finish than typical basement finish and that a fair finish rating appropriately accounted for the condition issues discussed by the Taxpayer.
26. The Taxpayer stated that the Subject Property did not have a sprinkler system as indicated on the PRF.
27. The Commission finds that the depreciated value of the sprinkler system should be removed from the assessed value of the improvements, reducing the assessment by \$2,100.¹¹
28. The Commission finds and determines that the assessed value of the improvement component is \$198,400, which when added together with the \$37,500 value of the land component results in a total assessed value of \$235,900 for tax year 2019.
29. 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.

¹¹ \$3,500 (Sprinkler System) - \$1,400 (40% Depreciation) = \$2,100.

30. 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	\$ 37,500
<u>Improvements</u>	<u>\$198,400</u>
Total	\$235,900

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