

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nichole L. Mallett,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0551

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

Background

1. The Subject Property is a residential parcel improved with a 2,145 square foot one story townhouse, with a legal description of: Whitehawk Replat 4 Lot 1 Block 0 18405 sqft, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$549,100 for tax year 2019.
3. Nicole L. Mallett (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 \$490,000 for tax year 2019.¹
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 A. Keetle.
7. Nichole L. Mallett and Rick Hiatt 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 1.²
10. The Commission’s review of a determination of the County Board of Equalization is de novo.³

¹ The Notification of Board Action for the 2019 assessment indicates a total assessed value of \$500,000 due to a mathematical error, the correct determination of total value of the County Board is \$490,000.

² Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

³ 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.”⁴ 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.”⁵
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.⁶
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
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.⁸
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the Subject Property should be assessed at a value nearer to the value determined in a 2014 appraisal report.
17. The Taxpayer did not present the appraisal report for the Commission to review or discuss how a value determined for 2014 related to the 2019 assessment year.
18. The Taxpayer alleged that the assessed value of the Subject Property was too high in relation to other comparable properties.
19. The Taxpayer discussed the differences between the Subject Property categorized by the Assessor’s office as a townhome and another property categorized as a ranch style property and reviewed some of the recent sales of properties in the area.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
21. “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

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

comparable is made more like the subject, its price is brought closer to the subject's unknown value."¹¹

22. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as type of construction, size, quality, condition, basement finish, etc.¹²
23. The County Appraiser stated that the total assessed value of the Subject Property as well as its higher per square foot value relative to other properties in the area are based on the Subject Property's characteristics, being one of the largest townhomes, with a large amount of basement finish, a large garage, and several decks and patios.
24. Without the PRFs for other properties in the area the Commission is unable to determine the comparability of the properties discussed or analyze the relationship between the assessed value of the Subject Property and other properties.
25. The Taxpayer questioned the amount of below ground finish found on the PRF for the Subject Property but was unable to state with certainty the actual finished square footage to be applied.
26. 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.
27. The County Board presented a table of the recent sales of one-story townhomes in the economic area of the Subject Property.
28. The County Appraiser indicated, after reviewing all of the information presented at the hearing regarding the Subject Property, including the PRF and sales in the economic area of the Subject Property and the subsequent assessment history of the Subject Property, his opinion of value for the Subject Property would be \$475,800 for tax year 2019, \$88,200 for the land component and \$387,600 for the improvements.
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.
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.

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 24, 2020, 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.*

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	\$ 88,200
<u>Improvements</u>	<u>\$387,600</u>
Total	\$475,800

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.
7. This Decision and Order is effective on June 17, 2021.

Signed and Sealed: June 17, 2021

Steven A. Keetle, Commissioner