

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Katherine C. Lempka,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0553

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 3,508 square foot one and one-half story residence, with a legal description of: West Shores Lot 52 Block 0 Irreg., Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$968,000 for tax year 2019.
3. 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 \$947,200 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. Katherine C. Lempka (Taxpayer) was present at the hearing.
8. Scott Barnes of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present at the hearing on behalf of 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 increase in the assessed value of the Subject Property, and particularly the land component of the Subject Property, from 2016 to 2019, was unreasonable and arbitrary and greater than the increase in the assessed value of other properties in the neighborhood.
17. 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 to the assessed values of the Subject Property and other properties in the neighborhood are only relevant to the current year’s assessment if the differences resulted in values that were not equalized for the current assessment year.
18. The Taxpayer discussed the condition of the interior of the Subject Property. Based on this discussion, the Commission is unable to find that the determination of the condition

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).

rating of the Subject Property as determined by the County Assessor was unreasonable, arbitrary, or incorrect.

19. The Taxpayer alleged that the value of the land component of the Subject Property was not valued uniformly or proportionally with other assessed land values in the same neighborhood.
20. The Taxpayer presented information from the County Assessor's website regarding a vacant lot as well as the Property Record Files (PRFs) for the Subject Property and five other properties all located in the same neighborhood.
21. A review of the PRFs presented shows that the land components were valued between \$6.70-6.74 per square foot for land components between 23,000 square feet and 33,000 square feet and between \$6.05-6.06 per square foot for land components larger than 33,000 square feet.
22. This valuation methodology is consistent with professionally accepted appraisal principles that hold that: "A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land."¹¹
23. The vacant lot presented by the Taxpayer is in the same size category as the Subject Property but was valued at \$4.49 per square foot.
24. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹²
25. The Commission finds and determines that the equalized value of the land component of the Subject Property is \$146,306.¹³
26. The Taxpayer alleged that the value of the improvement component of the Subject Property was not valued uniformly or proportionally with other comparable properties in the same subdivision.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
28. "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."¹⁵

¹¹ Appraisal Institute, *The Appraisal of Real Estate* 214 (13th ed. 2008)

¹² *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

¹³ 32,584.75 sq. ft. x \$4.49 psf = \$146,306

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation* 169-79 (3rd ed. 2010).

¹⁵ Appraisal Institute, *Appraising Residential Properties* 334 (4th ed. 2007).

29. A review of the PRFs for the Subject Property and the five other properties presented as comparables demonstrates that prior to the adjustment by the County Board, the value of the improvements on the Subject Property was uniform and proportionate with the value of the improvements on the other properties presented, but after the adjustment by the County Board, the value of the improvements on the Subject Property was not uniform and proportionate with the value of the improvements on the other properties presented.
30. The PRFs demonstrate that prior to the County Board adjustment, per square foot values were determined for different features of the properties and then those per square foot values were applied to each property based on its characteristics, such as above ground square footage, basement square footage, fireplaces, decks, garage square footage, swimming pools, etc. Using this methodology, the overall per square foot value of the Subject Property is higher than the other properties presented, not because of dis-equalized valuations, but rather due to the Subject Property's features, such as more basement square footage than the other properties presented and the existence of a swimming pool.
31. The County Board presented the PRF for 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 and the other properties presented.
32. The County Board additionally presented a table of assessed values for comparable properties in the same subdivision as the Subject Property. The County Appraiser stated that this table indicated that the total value of \$947,200 was at the high end of the per square foot value for one and one-half story properties and that this was attributable to the differences in features, such as a larger basement and swimming pool. The County Appraiser further stated that the assessed value of the Subject Property, as determined by the County Board, was equalized with the assessed values of other comparable properties on a per square foot basis.
33. The County Board also presented a table of the recent sales of one and one-half story properties in the same subdivision as the Subject Property. The County Appraiser stated that this table indicated that the total value of \$947,200 was supported by the per square foot sales prices of these properties.
34. The Commission finds and determines that the assessed value of the improvement component of the Subject Property as determined by the County Board is not equalized with those of comparable properties.
35. The Commission finds and determines that the equalized value of the improvement component of the Subject Property is the value determined by the County Assessor of \$768,000.

36. The Commission finds that 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.
37. The Commission finds that the Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and that 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 | \$146,306 |
| <u>Improvements</u> | <u>\$768,000</u> |
| Total | \$914,306 |

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 11, 2021.

Signed and Sealed: June 11, 2021

Steven A. Keetle, Commissioner