

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joan C. Wilson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0562

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 3,157 square foot one and one-half story residence, with a legal description of: Deer Creek Lot 15 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$417,100 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 \$400,000 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 25, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Tom Wilson (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) (Supp. 2020).

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 is negatively impacted because of the school district in which it is located.
17. The Taxpayer alleged that the assessed value of the Subject Property is negatively impacted by the empty nester demographics of the neighborhood.
18. The Taxpayer did not present information regarding the school district boundaries or which school district the properties discussed were located in.
19. Additionally, the Taxpayer did not present demographic information regarding the ages of residents or property owners in the neighborhood, or the number of persons living in properties in the neighborhood.
20. The Taxpayer did not present information to quantify the impact of the school districts or empty nester demographics of the neighborhood on the value of the Subject Property or the extent to which these factors offset each other.
21. The Subject Property is a one-and-one-half-story residence with a walkout basement that backs up to a golf course.

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 alleged that the assessed value of the Subject Property is negatively impacted because there are more ranch style properties than one-and-one-half-story properties in the neighborhood.
23. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales of other properties 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.
24. The County Board also presented a table of the assessed values of all of the one-and-one-half-story residential properties in the neighborhood of the Subject Property. The table of one-and-one-half-story properties indicates that the Subject Property has the lowest per square foot value of all of the 26 one-and-one-half-story properties in the neighborhood.
25. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
27. “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.”¹⁰
28. The Taxpayer presented a table of recent sales of properties that the Taxpayer alleged were comparable to the Subject Property for equalization purposes.
29. The properties presented by the Taxpayer are two story homes while the Subject Property is a one and one-half story home.
30. The County Boards information regarding the qualified sales of other properties that occurred in the economic area of the Subject Property show that generally two-story properties sell for less per square foot than one-and-one-half-stories, and one-and-one-half-story properties sell for less per square foot than ranch style properties within each neighborhood.
31. Two of the properties presented by the taxpayer are on smaller lots and have less above ground square footage than the Subject Property. These two sales are located in a different neighborhood than the Subject Property and are not located on a golf course.
32. The Taxpayer did not present the PRF for any of the properties discussed for equalization purposes. Without the details contained in the PRF of other comparable properties, the Commission is unable to determine the contributions of the various amenities or features of the properties, such as type of construction, size, quality, condition, basement finish, etc., to the value of the improvements.¹¹

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation* 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties* 334 (4th ed. 2007).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 29, 2020, includes the following:

NOTE: Copies of the County’s Property Record File for any parcel 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

- 33. The properties presented by the Taxpayer are not comparable to the Subject Property.
- 34. 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.
- 35. 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	\$ 50,000
<u>Improvements</u>	<u>\$350,000</u>
Total	\$400,000

- 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 July 8, 2021.

Signed and Sealed: July 8, 2021

Steven A. Keetle, Commissioner

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.