

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dennis F. Wildner Trust, Dennis F. Wildner,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0565

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 1,501 square foot ranch style residence, with a legal description of: Millard Heights Add Lot 25 Block 1 140.75 X 140, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$235,000 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 \$235,000 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 March 29, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Dennis F. Wildner was present at the hearing for the Dennis F. Wilder Trust (the Taxpayer).
8. Kurt Skradis, 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 was greater than its market value as demonstrated by recent sales.
17. The Taxpayer presented a spreadsheet listing limited information regarding four recent sales of ranch style properties as well as information printed from the County Assessor’s web site regarding these properties.
18. The Taxpayer’s four sales sold from \$179.91 to \$109.89 per square foot of above ground living space, while the Subject Property was assessed at \$156.06 per square foot.
19. The Taxpayer did not present the Property Record File (PRF) for any of the sold properties discussed. Without the details contained in the PRFs of other comparable properties, the Commission is unable to determine the contributions of the various amenities or features of the properties, such as age, size, quality, condition, basement square footage, basement finish, garage square footage, etc., to the value of the improvements.⁹

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 For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on February 18, 2021, includes the following:

20. The information that was presented by the Taxpayer shows that the Subject Property has no basement finish, while the sold properties all have some amount of basement finish. The Taxpayer alleged that by adjusting for the difference in basement finish, the per square foot sales prices would be reduced, lowering them to a range of \$162.96 to \$84.12 per square foot.
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 comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹⁰
22. The Taxpayer failed to adjust for other differences between the Subject Property and the sold properties. For example, the Subject Property is newer than the sold properties by twenty plus years and has the largest garage. No adjustments were made for differences in size, condition, number of fireplaces, or unfinished basement area.
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’s information regarding the qualified sales of other properties in the neighborhood of the Subject Property contain four different sales of ranch style properties that sold from \$163.44 to \$100.32 per square foot of above ground living space. Additionally, when looking at every style of property, all of the qualified sales in the neighborhood, the Subject Property is at least twenty years newer than the other properties in the neighborhood.
25. The County Assessor stated that because the Subject Property is so much newer than any other property in the neighborhood, it would have significantly less depreciation than other, older properties.
26. The Taxpayer has not demonstrated that sales of comparable properties indicate that the Subject Property is assessed at an amount greater than market value.
27. The Taxpayer’s materials alleged that the value of the Subject Property was negatively impacted by the proximity of a nearby airport and processing plant.
28. The Taxpayer did not present any information to allow the Commission to quantify the impact of the location of the airport and processing plant on the value of the Subject Property.
29. 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.

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 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.

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

30. 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	\$ 30,500
<u>Improvements</u>	<u>\$204,500</u>
Total	\$235,000

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 November 3, 2021.

Signed and Sealed: November 3, 2021

Steven A. Keetle, Commissioner