

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jerald D. Griffin et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0577

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 1,107 square foot split entry style residence, with a legal description of: Fred Gordon Add Lot 4 Block 1 73 X 137.5, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$124,200 for tax year 2019.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of less than \$76,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$91,000 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 the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Jerald D. Griffin and Kathy Griffin (the Taxpayers) 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 alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
17. The Taxpayer presented information from the County Assessor’s web site regarding the property located directly behind the Subject Property, which the Taxpayer alleged was comparable to the Subject Property but assessed at a much lower amount. The Taxpayer requested an equalized assessed value of \$89,300 based on the assessed value of the property located directly behind the Subject Property.
18. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
19. “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

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

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

20. The information from the Assessor’s web site indicates that the condition rating of the Taxpayer’s comparable property was lower than the condition rating of the Subject Property. The Taxpayer did not present the Property Record File (PRF) for any of the properties discussed for equalization purposes. Without the details contained in the PRF of other comparable property, the Commission is unable to determine the contributions of the condition rating of the properties to the value of the improvements.¹¹
21. 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.
22. The County Appraiser stated that, while preparing for the single commissioner hearing, he determined that the condition rating of the Subject Property should be reduced to fair from average. The County Appraiser prepared a market calculation detail for the Subject Property that applied a factor for the change in condition. The County Appraiser stated that, based on this revised calculation of value for the Subject Property, his opinion of value for the Subject Property as of the assessment date would be \$1,100 for the land component and \$88,100 for the improvement component, resulting in a total assessed value of \$89,200.
23. The Commission finds and determined that the value of the Subject Property is \$89,200 as of the assessment date.
24. 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.
25. 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	\$ 1,100
<u>Improvements</u>	<u>\$88,100</u>
Total	\$89,200

¹¹ 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.*

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