

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bette J. Fink,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0585

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 1,405 square foot ranch style residence, with a legal description of: Bay Meadows Add Lot 1 Block 9 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$176,600 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 \$176,600 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 May 19, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Bette J. Fink (Taxpayer) was present at the hearing.
8. Kurt Skradis and Scott Barnes of the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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
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

¹ Neb. Rev. Stat. § 77-1301(1), (3) (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).

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 from the prior year’s assessment is unreasonable and arbitrary.
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
18. The Taxpayer alleged that the assessed value of the Subject Property was greater than its actual value.
19. The Taxpayer indicated that the age of the roof, driveway, concrete pad, furnace, and air conditioning unit would negatively impact the value of the Subject Property.
20. The Taxpayer discussed the renovation and repair history of the Subject Property and the condition of the interior of the Subject Property.
21. The County Board presented the Property Record File (PRF) for the Subject Property and a spreadsheet of information regarding the qualified sales that occurred in the economic area of the Subject Property. The County Assessor used such information in determining

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).

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.

22. The County Appraisers indicated that after reviewing all of the information presented at the hearing regarding the condition of the Subject Property, the condition rating of the improvements on the Subject Property should be reduced from a rating of good to a rating of average. The County Appraisers further stated that such reduction would reduce the assessed value by \$10,000 for tax year 2019. Thus, the County Appraisers' opinion of value for the Subject Property after this change in condition rating would be \$166,600 for tax year 2019.
23. The Commission finds and determines, based on the information before it in the present proceeding, that the assessed value of the Subject Property for tax year 2019 is \$166,600.
24. The Commission finds 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 Commission finds 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	\$ 20,000
<u>Improvements</u>	<u>\$146,600</u>
Total	\$166,600

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