

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jeffrey R. White,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0586

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 1,052 square foot two story townhouse, with a legal description of: 31 March Southeast, Lot 2 Block 0 Lt 2 19.67 x 45 Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$208,300 for tax year 2019.
3. Jeffrey R. White (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 \$199,900 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 July 22, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, NE, before Commissioner Steven A. Keetle.
7. Jeffrey R. White was present at the hearing.
8. Scott Barnes and Kurt Skradis with 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

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, 759 N.W.2d 464, 473 (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 purchased the Subject Property for \$199,900 in February of 2019.
17. The Taxpayer alleged that the actual value of the Subject Property is \$199,900.
18. The Taxpayer provided two pages of a restricted appraisal report that determined a value for the Subject Property of \$200,000.
19. “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”⁹
20. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁰ This requires real property, with the exception of agricultural land and horticultural land, to be valued at 100% of its actual value.¹¹

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 *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

¹¹ See also, Title 350 Neb. Admin. Code ch 10 §003.01A (10/14)

21. The information presented supports the County Board’s determination of \$199,900 as the actual value of the Subject Property.
22. The Taxpayer alleges that the assessed value of the Subject Property is not equalized with other properties in the county because the level of value determined for residential property in Douglas County for tax year 2019 is 94%.¹²
23. The level of value determination of 94% referenced by the Taxpayer is a measure of the level of value of the *class* of residential property as a whole, not the valuation of any *individual* property. Within the statistical sample used to determine this 94% level of value there are individual properties that would have a higher sales-to-assessment ratio and some that would have a lower sales-to-assessment ratio.¹³
24. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”¹⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁵
25. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁷
26. “The object of Nebraska’s uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.”¹⁸
27. The County Board presented the Property Record Card (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
28. The County Appraiser stated that the valuation methodology shown in the PRF for the Subject Property was developed using the cost approach as well as recent sales of comparable properties and applied uniformly to all properties based on their characteristics.

¹² See, 2019 Reports and Opinion of the Property Tax Administrator for Douglas County, p 94.

¹³ See, Neb. Rev. Stat. § 77-5023. This statute authorizes the Commission increase or decrease the value of a *class* or *subclass* of real estate in any county or taxing authority “so that all classes or subclasses of real property in all counties fall within an acceptable range.” For the class including the Subject Property, the acceptable range for equalization is “ninety-two to one hundred percent of actual value.” The Douglas County Assessor’s finding of an average sales-to-assessment of 94% for tax year 2019, which is within the acceptable range set forth in Neb. Rev. Stat. § 77-5023, simply means that no county-wide adjustment to the value of that *class* of properties need be made by the Commission.

¹⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁵ *Id.* at 673, 94 N.W.2d at 50.

¹⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁷ *Cabela’s, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

¹⁸ *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 20 (2012).

29. The information regarding the characteristics of the Subject Property, assessment methodology, and recent sales, support a uniform and equalized valuation for the Subject Property of \$208,300, as determined by the County Assessor prior to the reduction by the County Board.
30. When determining the correct assessed value for properties before it the Commission must balance the requirements of equalization with the requirement that all real property shall be assessed at actual value.
31. The Commission finds that the assessed value of the Subject Property as of the assessment date is \$199,900.
32. 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.
33. 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	\$ 800
<u>Improvements</u>	<u>\$199,100</u>
Total	\$199,900

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 15, 2022.

Signed and Sealed: July 15, 2022

Steven A. Keetle, Commissioner