

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael A. McAndrews,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 19R 0588

Decision and Order Affirming the
Determination of the Douglas
County Board of Equalization

Case Nos: 20R 0604

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 4,655 square foot two story residence, with a legal description of: Country Club Estates Lot 2 Block 0 Lt 2 2.311 AC, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$574,000 for tax year 2019 and \$563,800 for tax year 2020.
3. Michael A. McAndrews (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessed values for tax year 2019 and tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$574,000 for tax year 2019 and \$574,000 for tax year 2020.
5. The Taxpayer appealed the determinations 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. Michael A. McAndrews 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

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 Subject Property is a 4,655 square foot two-story residence constructed in 1931 and located on a 2.311 acre lot on the north edge of the Omaha Country Club.
17. The Taxpayer purchased the Subject Property in April 2014 for \$487,000.
18. “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”⁹

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).

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 *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

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.”¹⁰
20. The Taxpayer presented a research report, *Omaha Single Family Housing Prices (2000 to 2020: Focus: The Impact of COVID)*,¹¹ and requested that the value of the Subject Property only be increased by the average amount of valuation appreciation per year listed in the report. This report contains information regarding general valuation trends for large segments of the housing market in Omaha, but it does not contain information regarding the valuation of properties over one acre in size or sufficiently broken down to address the tax years or neighborhood of the Subject Property.
21. The Taxpayer discussed the valuation history of the Subject Property, including value reductions by the County Board and confessions of judgment approved by the Commission.
22. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹² A decree fixing the value of property under a prior assessment is not admissible to prove value under a subsequent assessment, and a prior year’s assessment is not relevant to a subsequent year’s valuation.¹³
23. The County Board presented the 2019 and 2020 Property Record File (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.
24. The Taxpayer alleged that the assessed value of the Subject Property is set higher than, and not at a uniform percentage of, its market value as compared to other nearby properties.
25. The Taxpayer presented a list of five properties located near the Subject Property that sold from January 2014 to April 2017, that had 2019 assessed values lower than their sales prices.
26. The County Board presented a list of all valid sales in the same neighborhood as the Subject Property used in determining assessed values for 2019 and 2020, containing 18 and 11 sales for each tax year respectively. These sales occurred during the two years ending the September 30th, prior to the assessment date. Some of the properties sold are assessed at less than their sale price and some are assessed at more than their sale price.

¹⁰ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹¹ Steven Shultz, *Omaha Single Family Housing Prices (2000 to 2020: Focus: The Impact of COVID)* (March 18, 2021)

¹² *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹³ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl’s Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

27. The information presented to the Commission does not support the Taxpayer's contention that the Subject Property is not assessed at a uniform percentage of its market value as compared to other nearby properties.
28. The Taxpayer alleged that the land component of the Subject Property is assessed at a materially different level than that of other comparable properties.
29. "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."¹⁴
30. The Taxpayer presented a list and information from the County Assessor's web site regarding eight properties that have lower land valuations than the Subject Property. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.
31. The County Board presented a map showing the different land valuation models developed in the area. This map shows that residential properties located south and east of the country club golf course are valued using the "MRA" model and residential properties located north and west of the country club golf course are valued using the market model. The County Appraisers stated that generally residential properties in the market model are larger properties while properties in the MRA model are smaller and located in residential developments.
32. The County Appraisers stated that the eight properties presented by the Taxpayer were not comparable to the Subject Property due to their location, lot size, and improvements.
33. Without the PRF for the comparable properties, the Commission is unable to determine the adjustments to apply to make the eight properties comparable to the Subject Property.¹⁵
34. Based on the limited information presented, only one of the eight properties presented by the Taxpayer is located in the same land model area as the Subject Property. The information provided by the Taxpayer shows that the land component of that property is assessed at the same amount per acre as the Subject Property.
35. The Taxpayer has not demonstrated that the valuation of the land components of comparable properties are at materially different levels.
36. The Taxpayer alleged that the value of the Subject Property should be reduced due to unique characteristics of the property. The Taxpayer stated that the driveway is located on an easement that runs across an adjacent parcel. Additionally, the southern edge of the Subject Property is situated approximately 20 feet higher than the adjacent golf course, limiting direct access from the Subject Property to the golf course.

¹⁴ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on February 26, 2021, 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.*

37. The Taxpayer did not provide any information to allow the Commission to quantify the impact of the driveway easement or elevation of the Subject Property relative to the adjacent golf course on the value of the Subject Property.
38. For tax year 2020, the PRF shows that the County Assessor reappraised the Subject Property and determined an assessed value of \$563,800 for the Subject Property.
39. The summary report of the County Board protest indicates that the Subject Property was not reviewed by a referee or referee coordinator, and no recommendation was made to the County Board. The County Board then, based on the lack of review, set the assessed value of the Subject Property at the same value as the 2019 assessed value, which in the case of the Subject Property, was higher than the 2020 assessed value determined by the County Assessor and protested by the Taxpayer.
40. The Commission finds and determines that the actual value of the Subject Property for tax year 2019 is \$574,400 and the actual value of the Subject Property for tax year 2020 is \$563,800.
41. For tax year 2019 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.
42. For tax year 2019 the Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.
43. For tax year 2020 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.
44. For tax year 2020 the Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions 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 years 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$231,100
<u>Improvements</u>	<u>\$342,900</u>
Total	\$574,000

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is vacated and reversed.

4. The taxable value of the Subject Property for tax year 2020 is:

Land	\$231,100
<u>Improvements</u>	<u>\$332,700</u>
Total	\$563,800

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2019 and 2020.
9. This Decision and Order is effective on January 4, 2022.

Signed and Sealed: January 4, 2022

Steven A. Keetle, Commissioner