

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Vernon J. Breakfield,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0600

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 2,026 square foot ranch style residence, with a legal description of: Walnut Ridge Lot 321 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$291,100 for tax year 2019.
3. Vernon J. Breakfield (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 \$291,100 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 20, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Vernon J. Breakfield 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 (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 is not equalized with other comparable properties.
17. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
18. “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
19. “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.”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 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).

¹¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

20. The Taxpayer presented information from the County Assessor's web site regarding two comparable properties in the same subdivision as the Subject Property. The Taxpayer did not present the Property Record File (PRF) for either of these properties, which the Taxpayer alleged were not equalized with the Subject Property.
21. The County Board presented the 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.
22. The information presented by the Taxpayer indicates that the Subject Property and the two other properties are all ranch style properties constructed between 2003 and 2005 with the same quality of construction and condition ratings. The Subject Property has the most above ground square footage. Two of the properties, including the Subject Property, have basement garages and the other property has converted the basement garage space into living space.
23. The main difference between the Subject Property and the other properties presented is the amount of finished basement square footage.
24. Without the PRF for the comparable properties, the Commission is unable to determine the per square foot values used by the County Assessor for the different features of the properties discussed or to determine the adjustments to apply to make the other properties comparable to the Subject Property for the 2019 assessment.¹²
25. Using the valuation information from the PRF for the Subject Property and the information provided by the Taxpayer, the difference in the assessed values between the Subject Property and the comparable properties appears to be almost entirely explained by the difference in finished basement square footage. The property next door to the Subject has the lowest amount of basement finish and the lowest overall per square foot value and the property with the converted basement garage has the highest amount of basement finish and the highest per square foot value.
26. The Taxpayer stated that the information on the County Assessor's web site for the property next door to the Subject Property is incorrect. He has been in the property next door to the Subject Property and that it has an amount of basement finish similar to the Subject Property which is more basement finish than is shown on the PRF for that property. The Taxpayer did not know the number of finished square feet in the basement of the property next door to the Subject Property.
27. The County Assessors stated that the finished basement square footage on the PRF matched the amount listed in a 2017 sales listing of the property next door to the Subject

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 6, 2020 (amended on December 18, 2020, as to date of hearing only), 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.*

Property and that there have been no building permits obtained for additional finishing of the basement since that date.

28. Without the PRF for the next door property and an amount of square footage of basement finish as of the assessment date, the Commission is unable to determine an adjustment that could be made to change the assessed value of the Subject Property to account for this difference.
29. The Commission is unable to find and determine that the valuation of the Subject Property and similarly situated property, i.e. comparables, has been set at materially different levels.
30. 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.
31. 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

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	\$ 40,500
<u>Improvements</u>	<u>\$250,600</u>
Total	\$291,100

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 15, 2022.

Signed and Sealed: June 15, 2022

Steven A. Keetle, Commissioner