

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald W. Johnson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0397

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 1,016 square foot ranch style residence, with a legal description of: Bensonvale Acres Lot 8 Block 11 N 70FT 70 X 140, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$98,200 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 \$82,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$90,000 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 July 27, 2020, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Donald W. Johnson was present at the hearing.
8. Kurt Skradis, an appraiser with 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 value of the Subject Property should be reduced due to the condition of the improvements.
17. The Taxpayer discussed and presented photographs of the siding and paint, original 1960’s windows, kitchen cabinets and décor, bathroom, flooring, garage door, and driveway. The Taxpayer presented estimate ranges to repair or update the Subject Property but did not provide any of the estimates to support those ranges and indicated that some of them were made as far back as 2006 or 2007.
18. The County Board presented the Property Record File (PRF) for the Subject Property as well as information regarding all of the qualified sales that occurred in the valuation area of the Subject Property, which were used in evaluating the value attributed to each of the characteristics of residential properties in that area, including the Subject Property.
19. The PRF indicates that the Subject Property has a condition rating of fair. Considering the photographs and statements of the Taxpayer regarding the interior and exterior of the

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).

Subject Property, a condition rating of fair appears to be an appropriate condition rating for the Subject Property.

20. The County Appraiser stated that, in his opinion, the value determined by the County Assessor's office of \$98,200, as shown on the non-commercial cost detail contained in the PRF, was the correct assessed value of the Subject Property as of the assessment date.
21. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the street surface adjacent to the Subject Property.
22. The Taxpayer discussed and presented photographs of North 65th Street in front of the Subject Property that is used to access the Subject Property and its driveway. North 65th Street in front of the Subject Property is an asphalt surface ground down to gravel and dirt without sidewalks or storm drains. The Taxpayer did not present information that would allow the Commission to quantify a negative impact of this street on the value of the Subject Property.
23. The Taxpayer alleged that the assessed value of the Subject Property increased too much from the value determined by the County Board for the prior tax year.
24. The PRF for the Subject Property contains a valuation history that indicates that the County Board reduced the value of the Subject Property after a preliminary hearing in the prior tax year. The basis for the prior year's assessment or the County Board's reason for reducing the assessed value in the prior year was not presented to the Commission.
25. Additionally, 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
26. The Taxpayer argued that the value of the Subject Property was negatively impacted by crime and blight in the area of the Subject Property.
27. The Taxpayer stated that shootings and other crime in the neighborhood and surrounding area, including a triple homicide/drug deal gone bad in 2005 at the property directly next door to the Subject Property negatively impacted the value of the Subject Property.
28. The Taxpayer presented pictures of empty commercial buildings located along the section of Ames Avenue south of the Subject Property and discussed the state of the commercial properties located blocks from the Subject Property.
29. The Taxpayer alleged that the presence of low income properties and rental homes as well as empty lots in the area negatively impacted the value of the Subject Property.
30. The Taxpayer did not present information that would allow the Commission to quantify any impact of crime and blight in the area of the Subject Property on its value for 2019.
31. The Taxpayer alleged that recent sales in the area indicate that the Subject Property is assessed at higher than market value.
32. The Taxpayer presented information about three sales of properties on N 65th Street which occurred from 2014 to 2020. The information contained two real estate transfer

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See, *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).

statements and partial information from the County Assessor's web site. The information from the County Assessor web site contained only the addresses, valuation and sales history and lot size, other information regarding the improvements on the properties was not presented.

33. The County Appraiser stated that two of the three properties the Taxpayer presented would not have been utilized by the County Assessor's office for determining assessed values as they were not arms-length sales and would not have been included in the County's sales file.
34. The Taxpayer did not provide the PRF for the properties on the charts but rather provided information from the County Assessor's web site regarding the assessments of the three sold properties. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as size, quality, condition, improved basement square footage, garages, decks, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.¹¹
35. 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.
36. 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	\$10,000
<u>Improvements</u>	<u>\$80,000</u>
Total	\$90,000

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).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on June 23, 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.*

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 September 25, 2020.

Signed and Sealed: September 25, 2020

Steven A. Keetle, Commissioner