

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cynthia L. Hopp,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0284

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Evanston Add Lot 11 Block 5 90x92.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$509,800 for tax year 2018.
3. Cynthia L. Hopp (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$399,746 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$479,800 for tax year 2018.
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 February 6, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Russell J. and Cynthia L. Hopp were present at the hearing.
8. Larry Thompsen (the 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 the 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) (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).

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 provided a spreadsheet with “74 properties in our area” as evidence that their land and improvement taxable value is in excess of most of the other properties in the area. The spreadsheet showed the house valuation per square foot and the land valuation per square foot. According to the spreadsheet, 68 properties had a house valued at a lower price per square foot than the Subject Property and only 5 properties had a higher house value per square foot than the Subject Property. Similarly, 40 properties had a lower land value per square foot and 32 properties had a higher land value per square foot.
17. The Taxpayer did not provide any Property Record Files (PRF) for any of the properties listed on the spreadsheet for the Commission to make a determination if they were indeed comparable.⁹ The Taxpayer’s spreadsheet did not show quality and condition rating, house style, exterior, age or internal components. Simply taking the value of every home

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 For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 21, 2019, 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.

in an area and averaging them to make a comparison of value is not an acceptable appraisal method.

18. The testimony of the Taxpayer suggested the assessment of the land was excessive due to the irregular shape, slope and the location of the Subject Property lot. The Taxpayer stated much of the lot is driveway because of the need for a circle driveway so they can merge onto the street, which runs one way in the morning and one way in a different direction in the evening, making it difficult to get out of their driveway. They stated they have had vehicles drive onto their yard on days where the road is icy and the slope of the street makes it difficult for cars to get stopped. The Taxpayer was not able to quantify the effect of these conditions on the value of the land.
19. The Appraiser stated that he was unable to use the Taxpayer's spreadsheet to determine if the Subject Property's assessment was incorrect due to the fact that there was not enough information about the comparable properties and no PRFs were provided.
20. 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.
21. 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 77,100
<u>Improvements</u>	<u>\$402,700</u>
Total	\$479,800

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 2018.
7. This Decision and Order is effective on February 26, 2020.

Signed and Sealed: February 26, 2020

James D. Kuhn, Commissioner