

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Michael W. Doyle,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 15C 0781

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property was a commercial parcel improved with a 7,047 square foot building, with a legal description of: West Side Add Lot 6 Block 2 E of Saddle Creek Lots 4-5 & 20,106.25 ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$279,100 for tax year 2015.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$177,600 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$279,100 for tax year 2015.
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 January 31, 2018, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael W. Doyle (Taxpayer). and Monte Bowman were present at the hearing.
8. Linda Rowe with the Douglas County Assessor/Register of Deeds office 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the condition and quality rating of the Subject Property should be reduced from average and fair to fair and poor respectively.
17. The Taxpayer stated that he “did not put much” into the Subject Property because of the short term lease of the tenant as of tax year 2015.
18. The Taxpayer presented invoices for repairs to the Subject Property to support this contention. However all of the invoices were for work done prior to the assessment date of January 1, 2015.
19. The Taxpayer did not present any information to quantify the impact of a reduction of the quality and condition ratings on the assessed value of the Subject Property.
20. The Taxpayer did not present any Property Record Files (PRF) for any comparable properties or any properties alleged to be in a similar condition to the Subject Property.
21. The Taxpayer presented the demolition permit for the Subject Property whose improvement was demolished in 2017 to demonstrate that the condition rating of the Subject Property should have been reduced.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

22. That the information presented indicated that as of the assessment date, the Subject Property was occupied by a tenant.
23. The information further indicates that the improvements on the Subject Property were demolished in 2017 to allow the adjoining property owner to add additional service bays to their existing business.
24. The Taxpayer alleged that the 2016 sale of the Subject Property to an adjoining property owner was improperly considered when determining the assessed value of the Subject Property.
25. The sale of the Subject Property occurred approximately a year and a half after the assessment date, and after the date assessed values for tax year 2015 had been determined.
26. The County's Property Record File for the Subject Property demonstrates that the assessed value of the Subject Property was not determined using the sales comparison approach to value but rather the income approach to value.
27. 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.
28. 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 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 38,300
<u>Improvements</u>	<u>\$240,800</u>
Total	\$279,100

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 (2016 Cum. Supp.).
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 2015.
7. This Decision and Order is effective on April 26, 2018.

Signed and Sealed: April 26, 2018

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Steven A. Keetle, Commissioner