

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

Larry E. Ledent,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 16R 0445

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

**For the Appellant:**

Larry E. Ledent,  
Pro Se

**For the Appellee:**

Jennifer D. Chrystal-Clark,  
Deputy Douglas County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a 3,737 square foot two story brick residence. The legal description of the parcel is found at Exhibit 4. The property record card for the Subject Property is found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the Subject Property was \$322,800 for tax year 2016. Larry E. Ledent (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$276,400. The Douglas County Board determined that the taxable value of the Subject Property for tax year 2016 was \$322,800.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). On August 24, 2018, the Commission held a single commissioner hearing and issued a decision on the single commissioner hearing on March 22, 2019. On April 4, 2019 the County Board filed a motion for reconsideration before a panel of the Commission.

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<sup>1</sup> E1, E4:67.

Nebraska law requires the Commission to grant a rehearing before a panel of commissioners under these circumstances. The Commission vacated the designation of this appeal for a single Commissioner hearing, vacated the Decision and Order issued March 22, 2019, and set the matter for a hearing before a quorum of the Commission. The Commission held a hearing before a quorum of the Commission on July 29, 2019, where the Commission heard evidence and argument. Only the evidence received into the record at the July 29, 2019, hearing may be considered by the Commission when deciding the appeal on rehearing.<sup>2</sup> At the hearing the parties stipulated to the receipt of exchanged exhibits 1 through 12.

### III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.<sup>3</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>4</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>5</sup>

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

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<sup>2</sup> See Neb. Rev. Stat. § 77-5016 (Reissue 2018)

<sup>3</sup> 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).

<sup>4</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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>8</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>9</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>10</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>11</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### IV. APPLICABLE LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>14</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning

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<sup>8</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>9</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> *Id.*

<sup>15</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

as assessed value.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>21</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>22</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>23</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>24</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>25</sup> If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.<sup>26</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>27</sup>

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<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> *Neb. Const.*, Art. VIII, § 1.

<sup>20</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>21</sup> *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>22</sup> *Cabela's Inc.* at 582, 623.

<sup>23</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>24</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>25</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>26</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>27</sup> *Id.* at 673, 94 N.W.2d at 50.

## V. FINDINGS OF FACT AND ANALYSIS

The Taxpayer alleged that the Subject Property is zoned as agricultural and therefore should be valued as agricultural or horticultural land. In order to meet the definition of agricultural and horticultural land for valuation purposes under Nebraska law, the parcel must be primarily used for agricultural or horticultural purposes. Additionally any land directly associated with any building or enclosed structure cannot be assessed as agricultural or horticultural land.<sup>28</sup> The subject property is a .66 acre parcel not primarily used for agricultural and horticultural purposes but rather as a residence, and the land component is associated with the home built on that property.<sup>29</sup> The Subject Property cannot be assessed as agricultural or horticultural land even if it is zoned agricultural.

The Taxpayer next alleged that the quality and condition ratings placed on the Subject Property were too high resulting in an assessed value that was too high. The improvement on the Subject Property is a two-story brick residence built in 1880 and last remodeled in 2002.<sup>30</sup> The Taxpayer alleged that the exterior brick of the residence needed to be repointed and presented pictures of the exterior of the Subject Property and what appears to be a small portion of the basement.<sup>31</sup> The Taxpayer did not produce evidence at the hearing which demonstrated that the quality or condition ratings as determined by the County Assessor's office for tax year 2016 were unreasonable or arbitrary.

Finally, the Taxpayer alleged that the Subject Property was being assessed for a pole barn that is actually located on a different parcel of property. The Taxpayer testified regarding the location of the pole barn in relation to the land component of the Subject Property. The Taxpayer also called Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office office as a witness. Thomsen testified that the pole barn identified on the Property Record File (PRF) and assessed as a part of the Subject Property is not located on the Subject Property. For the subsequent tax year the pole barn was attributed to and assessed on a different parcel of property.<sup>32</sup> The evidence before the Commission demonstrates

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<sup>28</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>29</sup> E4:1-11.

<sup>30</sup> E4:4.

<sup>31</sup> E8:16-25

<sup>32</sup> E3.

that the pole barn, listed as an improvement on the Subject Property and valued at \$18,563 for tax year 2016, is actually on a different parcel of property and should be removed from the determination of assessed value of the Subject Property.

Based on the record before it the Commission finds and determines that the assessed value of the Subject Property for tax year 2016 should be \$15,800 land and \$288,400<sup>33</sup> improvements, for a total valuation of \$304,200.

## VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be vacated and reversed.

## VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is vacated and reversed.

2. The taxable value of the Subject Property for tax year 2016 is:

Land:	\$ 15,800
Improvements:	<u>\$288,400</u>
Total:	\$304,200

3. This Decision and Order, if no appeal is timely filed, 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.

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<sup>33</sup> \$306,985 - \$18,563 = \$288,422, rounded to \$288,400.

6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective for purposes of appeal on January 28, 2021.<sup>34</sup>

Signed and Sealed: January 28, 2021

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>34</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.