

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

Romonajo Enterprises, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17C 0514

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

**Background**

1. The Subject Property is a commercial parcel improved with a split level building originally built in 1914, currently operating as a restaurant and banquet hall, located at 15409 S. 2<sup>nd</sup> Street, Bennington, Nebraska, with a legal description of: BENNINGTON – TOWN OF- LOT 6 BLOCK 11 1/2 VAC ALLEY ADJ & ALL LOTS 3-4-5 & S 58 FT LOT IRREG.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$446,700 for tax year 2017.
3. Romonajo Enterprises, LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$446,700 for tax year 2017.
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 9, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Roger Nieman, a Member of Romonajo Enterprises, LLC, was present at the hearing for the Taxpayer.
8. Linda Rowe, an employee of the County Assessor, 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 2018).

<sup>2</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

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 County Assessor relied on incorrect information in determining the assessed value of the Subject Property.
17. The County Assessor determined the assessed value of the Subject Property using a Cost Detail. Using this approach, the County Assessor determined that the replacement cost new (RCN) of the primary building on the Subject Property was \$757,680 and the RCN of various add-on improvements was \$26,250. This \$26,250 in add-on improvements included 3,000 square feet of paved concrete parking area with an RCN of \$8,250.
18. The County Assessor applied physical depreciation of 46.39 percent to arrive at a replacement cost new less depreciation (RCNLD) of \$420,291 for the improvement component of the Subject Property.
19. The information adduced at the hearing established that the paved parking area is located on an adjacent parcel and not on the Subject Property.

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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>3</sup> *Brenner* at 283, 811.

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<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. 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. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

20. The Taxpayer disputed the County Assessor's classification of the Subject Property as 50 percent Bar/Tavern and 50 percent Retail Store. However, the information adduced at the hearing demonstrated that these classifications were assessed at the same rate.
21. The Taxpayer disputed the County Assessor's classification of the Subject Property's quality as average and its condition as good. However, the Taxpayer did not provide clear and convincing evidence to demonstrate that the ratings in these categories were arbitrary or unreasonable.
22. The value of the improvement component of the Subject Property should be recalculated to remove value attributable to the paved parking area located on the adjacent parcel.
23. The taxable value of the improvement component of the Subject Property should be \$415,842.<sup>9</sup>
24. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. The Taxpayer has 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 vacated and reversed.

## 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 2017 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 26,400
<u>Improvements</u>	<u>\$415,842</u>
Total	\$442,242

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 2017.

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<sup>9</sup> 757,680 (building value) + \$8,000 (utility building frame) + \$10,000 (canopy wood) = \$775,680; this is the RCN of the improvements. 46.39% (physical depreciation) × \$775,680 = \$359,838 total depreciation. \$775,680 - \$359,838 = \$415,842; this is the RCNLD of the improvements on the Subject Property.

7. This Decision and Order is effective on July 12, 2019.

Signed and Sealed: July 12, 2019

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Robert W. Hotz, Commissioner