

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

Robert J. Edick,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17R 0389 & 18R 0374

Decision and Order Affirming the Decisions  
of the Douglas County Board of  
Equalization

**For the Appellant:**

Robert J. Edick,  
Pro Se

**For the Appellee:**

Jennifer D. Chrystal-Clark,  
Deputy Douglas County Attorney

These appeals were 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 3,811 square foot home. The legal description of the parcel is found at Exhibits 1 and 2. The property record files for the Subject Property are found at Exhibits 3 (2017) and 4 (2018).

**II. PROCEDURAL HISTORY**

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$980,500 for tax year 2017. Robert J. Edick (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$770,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$980,500.<sup>1</sup>

The Assessor determined that the assessed value of the Subject Property was \$1,033,200 for tax year 2018. The Taxpayer protested this assessment to the County Board and requested an

---

<sup>1</sup> E1.

assessed value of \$804,100. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$1,033,200.<sup>2</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 12, 2020. Prior to the hearing, the parties exchanged exhibits. The parties stipulated to the receipt of exchanged exhibits 1 through 4; exhibits 5 and 6 were not received.

### 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>

---

<sup>2</sup> E2.

<sup>3</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>4</sup> *Brenner* at 283, 811.

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

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

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

The 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. The commission 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

---

<sup>8</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. 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 Equal.*, 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* at 180, 829.

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning 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>

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>19</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>20</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>21</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>22</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>23</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>24</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”<sup>25</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>26</sup>

## V. FINDINGS OF FACT AND ANALYSIS

The Subject Property is a lakefront residential parcel improved with a 3,811 square foot one and one-half story residence. The residence was built in 2006 and has two wood decks, one of

---

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

<sup>20</sup> *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>21</sup> *Cabela's Inc.*

<sup>22</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>23</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>24</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>25</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>26</sup> *Id.* at 673, 94 N.W.2d at 50.

which is partially covered, a 2,484 square foot garage, and a 4,574 square foot walkout basement, 2,223 square feet of which is finished. The quality and condition of the Subject Property for 2017 were rated very good and good respectively by the Assessor, but for 2018, the condition rating was lowered to average.

The Taxpayer alleged that the increase in the assessed value of the Subject Property from 2016, particularly the assessed value of the land component, was unreasonable. The Taxpayer testified that the value of the land component increased by 72% from 2016 to 2017. The Taxpayer also testified that he was aware of the value of land components in the Regency neighborhood that stayed the same or decreased during the same time period. The 2017 Property Record File (PRF) for the Subject Property indicates that a 2017 revaluation for Douglas County resulted in increased land values that are more likely to reflect the current market.<sup>27</sup> The valuation history of the Subject Property shows that it was reappraised for tax year 2017 and the value of the land component did increase by 72% from 2016 to 2017; however, prior to 2017, the land value had not been changed since at least 2008. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>28</sup> A prior year's assessment is not relevant to the subsequent year's valuation.<sup>29</sup> The County Board presented a list of sales of properties from the Subject Property's West Shores neighborhood, but there is not any evidence before the Commission to indicate that the Regency neighborhood, located miles away from the Subject Property, is similar to the West Shores neighborhood for purposes of land valuation.<sup>30</sup>

The Taxpayer alleged that the value of the Subject Property was not equalized with other comparable properties. The value of the Subject Property for tax year 2018 is \$271.11 per square foot of above grade improvements.<sup>31</sup> The Taxpayer testified that the per square foot value of the neighboring property for tax year 2018 is \$210.78 per square foot. The Taxpayer also presented four property addresses and assessed values for 2018 that ranged from \$200.80 per square foot to \$227.45 per square foot. The Nebraska Court of Appeals has held that “[t]o set the valuation of

---

<sup>27</sup> E3:12.

<sup>28</sup> *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>29</sup> *DeVore, Affiliated Foods*, see also *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

<sup>30</sup> See, E3:14 & E4:11.

<sup>31</sup> See, E4:3 \$1,033,200 ÷ 3,811 sq. ft. = \$271.11 psf.

similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>32</sup>

Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>33</sup> “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”<sup>34</sup> The County Board presented the PRF for the Subject Property for tax years 2017 and 2018, which set forth the characteristics and amenities of the Subject Property and indicate how these factors impact the valuation for each tax year.<sup>35</sup> The record before the Commission does not contain the PRF for any property offered as a comparable to allow the Commission to determine if it is comparable to the Subject Property or if adjustments can be applied to make it comparable to the Subject Property.<sup>36</sup> For example, the Subject Property has a five-stall garage and a basement that is larger than the one and one-half story above ground living area, both unusual features that would increase the per square foot assessed value. There is no evidence before the Commission that other properties presented by the Taxpayer do or do not share these features.

The Taxpayer has not demonstrated that the per square foot value of the Subject Property is set at a materially different level than the per square foot value of comparable properties.

## VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.

---

<sup>32</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>33</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>34</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>35</sup> E3 & 4.

<sup>36</sup> For this reason, the Order for Hearing and Notice of Hearing issued to the Taxpayer on November 18, 2019 (subsequently amended as to date of hearing only), includes the following:

**11. REQUIRED EVIDENCE Each party shall provide as an exhibit:**

- a. Copies of the County’s Property Record File for any parcel a party will assert is a comparable parcel.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

**VII. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$240,200
<u>Improvement:</u>	<u>\$740,300</u>
Total:	\$980,500

3. The taxable value of the Subject Property for tax year 2018 is:

Land:	\$ 240,200
<u>Improvement:</u>	<u>\$ 793,000</u>
Total:	\$1,033,200

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2017 and 2018
8. This Decision and Order is effective for purposes of appeal on January 7, 2022.<sup>37</sup>

Signed and Sealed: January 7, 2022

\_\_\_\_\_  
Steven A. Keetle, Commissioner

SEAL

\_\_\_\_\_  
James D. Kuhn, Commissioner

<sup>37</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.