

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

Joseph M. Bilunas,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0052

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

Background

1. The Subject Property is a residential parcel improved with a 1,588 square foot two story residence, with a legal description of: Evanston Add Lot 20 Block 10 50 X 135, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$197,900 for tax year 2017.
3. Joseph M. Bilunas (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$166,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$197,900 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 March 12, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Joseph M. Bilunas was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County 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.<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 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 alleged that the assessed land value of the Subject Property was too high and that the result was that the Subject Property was assessed at a higher relative value than a comparable property.
17. The Taxpayer presented the information from the County Assessor’s web site regarding several properties whose lots the Taxpayer alleged were comparable to the Subject Property.
18. The County Appraiser stated that the County Assessor’s office did a land value study for the 2017 tax year that reallocated the value attributed to the land component of many residential properties in Douglas County. As a result of this land value study, lot values were different depending on the location of the property.
19. The County Appraiser stated that the land study determined that Howard Street was one dividing line between lot valuation areas and that lots to the north of Howard Street were assessed higher than the lots to the south. The Subject Property is located on the north

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<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).

side of Howard Street, while the properties presented by the Taxpayer with lower lot values were located on the south side.

20. The County Board presented a list of sales of property in the economic area of the Subject Property; this economic area contained the subdivision in which the Subject Property is located as well as the subdivision of the other properties presented by the Taxpayer. This list of sales demonstrated that the characteristics, sales prices, and assessed values on a per square foot basis of the properties are different in the Subject Property's subdivision than they are in the subdivision of the other properties presented.
21. The Commission finds that the properties presented by the Taxpayer that are located on the south side of Howard Street are not comparable to the Subject Property for purposes of determining land valuation.
22. The Taxpayer further alleged that the lot value of the Subject Property should be lower than that of the surrounding properties. The Subject Property has a driveway that slopes toward the street and has a retaining wall between the driveway and the neighboring property. The Taxpayer alleged that the Subject Property should have a lower lot value than its neighbors that have flat driveways without the slope.
23. The Taxpayer presented information regarding the properties on either side of the Subject Property from the Assessor's web site. This information indicates that the lot values for all three of these properties was \$66,200 for tax year 2017.
24. The Taxpayer did not present information to show the market impact of the sloping driveway or retaining wall on the value of a lot to allow the Commission to quantify their effect on the value of the land component of the Subject Property.
25. The Taxpayer alleged that the total assessed value of the Subject Property increased at a greater proportion from the prior year's value than did the assessed values of the properties on either side of the Subject Property.
26. The information from the County Assessor's web site shows that the values of the Subject Property and the properties on either side of the Subject Property were different for the tax year in question and for prior tax years.
27. 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>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
28. The Taxpayer alleged that the Subject Property was not assessed uniformly or proportionally with the properties located on either side of the Subject Property, which are comparable properties.
29. The Taxpayer presented information from the County Assessor's web site for the properties that he alleged were comparable to the Subject Property.
30. The Taxpayer presented information regarding the characteristics of the Subject Property as well as the properties located on either side of the Subject Property. This information

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<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

discussed the age of the finishes in the Subject Property as well as items that have been replaced or added to the other properties presented.

31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>
32. The information presented indicates that the three properties presented have similar ages and are located next to each other; there are also indications of differences in the type of construction, the quality of construction, the condition of the properties, and the amount and type of amenities, such as basement finish, sunroom size, etc.
33. “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>12</sup>
34. The Taxpayer did not present the Property Record Files (PRF) for the parcels that he alleged were comparable to the Subject Property. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>13</sup>
35. 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.
36. 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 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

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<sup>11</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>12</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>13</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 9, 2018, 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.*

Land	\$ 66,200
<u>Improvements</u>	<u>\$131,700</u>
Total	\$197,900

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.
7. This Decision and Order is effective on January 22, 2020.

Signed and Sealed: January 22, 2020

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Steven A. Keetle, Commissioner