

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

Linda K. Baker,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0053

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

Background

1. The Subject Property is a residential parcel improved with a one and one-half story finished residence, with a legal description of: Brandon Park Lot 25 Block 0 Irreg Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$455,800 for tax year 2017.
3. Linda K. Baker, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$365,618 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$435,500 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 January 25, 2019, at the Omaha State Office Building, 1313 Farnam, Room E (301E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Linda K. Baker and Fred Baker were 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 Subject Property should assessed at the same percentage of value as another property that they sold in a different area of the county.
17. The Taxpayer purchased the Subject Property in August of 2016 for \$435,500. The 2016 assessment of the Subject Property was \$339,500. For the 2017 assessment, the total assessed valuation increased to \$455,800, and was reduced by the County Board to the purchase price of \$435,500 or 100% of the purchase price.
18. The Taxpayer sold a property in May of 2016 for \$453,001. The 2016 assessment of that property was \$456,200 (the Pacific Pointe Property). For the 2017 assessment, the total assessed valuation decreased to \$382,100, approximately 84.35% of the purchase price.
19. The Subject Property and the Pacific Pointe Property are located in different subdivisions and different market areas in Douglas County and are approximately six miles apart.
20. “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive

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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).

of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”<sup>9</sup> “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”<sup>10</sup>

21. The Taxpayer did not produce the Property Record File (PRF) for the Pacific Pointe Property to demonstrate the basis of the county’s 2017 determination of value for the Pacific Pointe Property.<sup>11</sup> The Taxpayer did not present any information regarding sales that occurred in the area of the Pacific Pointe Property or any other market information for residential properties the area of the Pacific Pointe Property or to demonstrate that the County Board reduced the assessed value of the Pacific Pointe Property at a protest hearing for the 2017 assessment.
22. The Taxpayer produced information from the County Assessor’s web site for a few properties that were assessed below their purchase price, but did not produce the PRFs for those properties.
23. The County Board presented the PRF for the Subject Property, as well as information regarding all of the qualified sales that occurred in the economic area of the Subject Property, which were used in determining the value attributed to each of the characteristics of residential properties in that area, including the Subject Property. The sales information presented by the County Board indicates that some properties in the economic area of the Subject Property sold for more than their assessed value and some properties sold for less than their assessed values.
24. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property.<sup>12</sup>
25. 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>13</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>14</sup>

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<sup>9</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>10</sup> *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

<sup>11</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.*

<sup>12</sup> See, *Cabela’s Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>13</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>14</sup> *Id.* at 673, 94 N.W.2d at 50.

26. The Taxpayer alleged that the assessed value of the Subject Property is too high in relation to other comparable properties in the Brandon Park neighborhood.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>15</sup>
28. “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>16</sup>
29. The Taxpayer presented a table setting forth the assessed values for land and improvements of properties in the Brandon Park neighborhood on a per square foot basis.
30. The Taxpayer did not present the PRFs for any of the properties in the Brandon Park neighborhood. Without the details contained in the PRFs, the Commission is unable to determine the contributions to value of the various amenities or features of these other properties, such as style of construction, quality, condition, finished basement square footage, garage size, fireplaces, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>17</sup>
31. The Taxpayers alleged that the assessed value of the Subject Property increased while the majority of properties in the Brandon Park Subdivision decreased, and that therefore the Subject Property’s assessed value should be reduced.
32. 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>18</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>19</sup>
33. The Taxpayer stated that the Subject Property was “flipped” by the prior owner and that some renovation work was done to the Subject Property prior to the Taxpayer’s purchase of the Subject Property in 2016. The Taxpayer did not demonstrate what the condition of the Subject Property was as of the 2016 assessment date.
34. The Taxpayer alleged that the condition rating of the Subject Property as determined by the County was too high. The Taxpayer presented some pictures of the interior of the Subject Property and discussed some of the renovation work that was done by the previous owner as a part of the flip of the Subject Property.

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<sup>15</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>16</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>17</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.*

<sup>18</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>19</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).

35. The information before the Commission does not demonstrate that the County's determination that the condition rating of the Subject Property was good was unreasonable or arbitrary.
36. The Taxpayer alleged that the characteristics of the Subject Property were incorrect and that the assessed value should be reduced.
37. The Taxpayer presented information about the overall measurements of the Subject Property, the finished basement area, and its wood deck as well as the bathrooms and other plumbing fixtures in the Subject Property.
38. Based on all of the information presented at the hearing, the Commission determines that the total above ground square footage of the Subject Property should be 2,272 square feet, the amount of basement finish is 1,050 square feet, and the wood deck is 256 square feet. Applying these square footage amounts to the assessment model values presented in the PRF for the Subject Property would result in an assessed value of \$414,600 for the Subject Property for tax year 2017.<sup>20</sup>
39. 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.
40. 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.

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	\$ 58,500
<u>Improvements</u>	<u>\$356,100</u>
Total	\$414,600

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).

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<sup>20</sup> Reducing the building SF from 2,522 to 2,272, the Basement Finish from 1,330 to 1,050 and the wood deck from 106 to 256 would result in the following calculation: \$272,685 (Building SF) + \$1,361 (Slab Roof Ceiling) + \$28,484 (Built in Garage) + \$42,389 (Basement Finish) + \$4,137 (Wood Deck) + \$35,730 (Basement Block 8ft) + \$13,886 (Appliance Adjustment) + \$15,615 (Plumbing Adjustment) - \$712 (Rough In Adjustment) + \$3,500 (Sprinkler System) + 4,125 (Brick Veneer) = \$421,200 Total Replacement Cost New (RCN). Applying physical depreciation of 15.45% would result in a total depreciation of \$65,075 (\$421,200 x .1545 = \$65,075). Subtracting the depreciation from the RCN would result in a Replacement Cost New Less Depreciation of \$356,125 rounded to a RCNLD of \$356,100. Adding the land value of \$58,500 would arrive at the total value of \$414,600 (\$356,100 Improvements + \$58,500 Land).

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 February 7, 2020.

Signed and Sealed: February 7, 2020

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Steven A. Keetle, Commissioner