

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

Robb E. Sperry,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0111

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 1,169 square foot raised ranch residence, with a legal description of: Lands Sec-Twn-Rge 01-06-12 N 100 S 635 E 150 W 183 Ft S W ¼ S W ¼, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$105,500 for tax year 2017.
3. Robb E. Sperry (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$80,700 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$105,500 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 February 12, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robb E. Sperry 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 value of the land component of the Subject Property was too high when compared to other nearby properties.
17. The land component of the Subject Property is assessed at \$32,000 and consists of approximately .34 acres of land.
18. The Taxpayer alleges that the average per acre value for the land component of nearby properties is \$28,507 per acre and that therefore the land component of the Subject Property should be assessed at \$7,200.
19. The Taxpayer did not present the Property Record Files (PRF) or other information regarding the assessed value of the parcels that he used to determine the average per acre assessed value.
20. The information discussed at the hearing before the Commission indicates that all but two parcels located near the Subject Property are multi-acre residential parcels.
21. Some of these parcels located near the Subject Property have an agricultural or horticultural use and the information presented does not allow the Commission to

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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).

determine if they are classified as agricultural or horticultural land or are subject to special valuation. Agricultural and horticultural land and land subject to special valuation are a separate classification of real property subject to lower assessed valuation.<sup>9</sup>

22. The Taxpayer indicated that the only other property smaller than an acre near the Subject Property consisted of two lots, one that was residential and one that was commercial, but that they had common ownership.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
24. The County Board presented the Property Record File (PRF) for the Subject Property, which contains information about the characteristics of the Subject Property and the value the county attributed to those characteristics.
25. The PRF indicates that the County Assessor's office performed a land valuation study and that land values were reassessed for the 2017 tax year. The County Appraiser stated that the land valuation study found that multi-acre residential parcels had a lower per acre market value than residential parcels less than an acre.
26. The findings of the County Assessor's land valuation study are consistent with generally accepted mass appraisal methodology regarding land valuation.
27. "A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land."<sup>11</sup>
28. "Surplus land is not currently need to support the existing improvement and cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel."<sup>12</sup>
29. 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.
30. 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.

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<sup>9</sup> See, Neb. Rev. Stat § 77-201 (Reissue 2018)

<sup>10</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>11</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

<sup>12</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

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:

Land	\$ 32,000
<u>Improvements</u>	<u>\$ 73,500</u>
Total	\$105,500

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 February 28, 2020.

Signed and Sealed: February 28, 2020

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Steven A. Keetle, Commissioner