

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

Lionel L. Reilly,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17R 0126 & 18R 0227

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

**Background**

1. The Subject Property is a residential parcel improved with a 3,196 square foot raised ranch residence, with a legal description of: Skyline Estates Lot 6 Block 0 Irreg E 150 Ft Lt 6, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$464,500 for tax years 2017 and 2018.
3. Lionel L. Reilly (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$418,600 for tax year 2017 and 2018.
4. The County Board determined that the taxable value of the Subject Property was \$464,500 for tax years 2017 and 2018.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 14, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Lionel L. Reilly 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>
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

<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).

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 land component of the Subject Property was not being assessed uniformly or proportionately with the land component of other comparable properties.
17. The Taxpayer presented information about four parcels to the north and east of the Subject Property that had higher land values but lower per acre values than the Subject Property.
18. The land component of the Subject Property is .75 acres while the other properties presented are greater than two acres in size.
19. The County Appraiser indicated that the County Assessor’s office did a land valuation study for the 2017 tax year, and that study indicated that the value of the multi-acre lots were lower on a per acre basis than lots smaller than an acre in size or less.
20. “Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different

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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).

prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”<sup>9</sup>

21. The Taxpayer alleged that the characteristics of the Subject Property were incorrect in that it has only four bedrooms and three bathrooms. The Taxpayer offered information regarding the location, number and type of bedrooms and bathrooms in the Subject Property.
22. The County Board presented the PRF for the Subject Property for tax years 2017 and 2018, 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.
23. The County Appraiser stated that the calculation of value in the county’s assessment model was based on total square footage, and the number of bedrooms did not change valuation determination. After reviewing the information presented at the hearing, as well as the information contained in the Property Record File (PRF) for the Subject Property, he stated that the calculation contained in the Market Calculation Detail (MCD) contained in the PRF for land and improvements would be the correct assessed value of the Subject Property if the characteristics of the Subject Property were changed by removing two bathrooms.
24. Removing two bathrooms from the calculation in the MCD contained in the PRF would reduce the assessed value of the improvements by \$11,900 for a total improvement value of \$389,000.<sup>10</sup>
25. The Taxpayer alleged that assessed value of the improvements on the Subject Property were not equalized with the assessed values of other comparable properties.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>
27. “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>
28. The Taxpayer presented partial printouts from the County Assessor’s web site for properties that he alleged were comparable to the Subject Property for tax years 2017 and 2018.
29. The Taxpayer did not present the 2017 or 2018 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, such as style of construction, quality, condition,

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<sup>9</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

<sup>10</sup> 2 bathrooms at \$6,000 = 12,000 x .99 NBHD Adj = \$11,900 (rounded). \$400,900 - \$11,900 = \$389,000.

<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).

finished basement square footage, garage size, outbuildings, fireplaces, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>13</sup>

30. The Taxpayer alleged that the assessed value of the Subject Property changed too much from the 2019 tax year to the 2017 tax year.
31. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>14</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>15</sup>
32. 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.
33. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 and 2018 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 and 2018 is:

Land	\$ 63,600
<u>Improvements</u>	<u>\$389,000</u>
Total	\$452,000

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 years 2017 and 2018.

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<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.*

<sup>14</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>15</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).

7. This Decision and Order is effective on January 31, 2020.

Signed and Sealed: January 31, 2020

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Steven A. Keetle, Commissioner