

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

Robert A. Nebe,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0141

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 1,730 square foot ranch style residence, with a legal description of: Farm-The-Replat II, Lot 45 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$366,600 for tax year 2017.
3. Robert A. Nebe, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$294,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$338,600 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 July 22, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robert A. Nebe was present at the hearing.
8. Stan Mlotek, Real Estate Specialist with the Douglas County Assessor/Register of Deeds (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

1. 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.
2. The Taxpayer presented a chart he prepared containing information about the land component of seventeen parcels located near the Subject Property. The Taxpayer did not provide the Property Record File (PRF) for any of the seventeen parcels located near the Subject Property.
3. 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. These sales were used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
4. 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.

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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).

5. “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 prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”<sup>9</sup>
6. The Subject Property is 0.82 acres, making it the second smallest of the lots presented by the Taxpayer. It has the second lowest assessed value and the second highest assessed value per acre. According to the information presented, as the size of the lot increases, the assessed value increases and the per acre assessed value decreases, exactly as expected.
7. The Taxpayer alleged that the increase in the assessed value for the land component of the Subject Property should be lowered because the increase was greater than other properties as a percentage of its prior assessed value.
8. The information presented by the Taxpayer on the assessed value of the land component of the Subject Property and the seventeen additional properties indicates that, as the size of the lot increased, the percentage increase decreased. As before, this is consistent with professionally accepted appraisal principles.
9. Additionally, 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>10</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>11</sup>
10. The Taxpayer alleged that the improvements on the Subject Property were not being assessed uniformly or proportionately with the improvements of other comparable properties.
11. The Taxpayer presented a chart he prepared containing information about the above ground square footage and assessed value of the improvement components of seventeen parcels located near the Subject Property. The Taxpayer’s chart does not indicate the style of construction of the seventeen parcels (ranch, two story, etc.) and at the hearing, the Taxpayer was unable to explain what style of construction each of the seventeen properties was. The chart does not indicate the quality or condition of the properties, the age of the properties, or the amenities such as finished basement, fireplaces, outbuildings, etc. The Taxpayer did not provide the PRF for any of the seventeen parcels located near the Subject Property.
12. The Subject Property is a ranch style property of good plus quality and good condition with the smallest amount of above ground square footage of all of the properties presented by the Taxpayer.

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

<sup>10</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>11</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).

13. The Subject Property also has 1,200 square feet of finished basement, which are not figured into the above ground square footage of the property but which would add value.
14. Generally the base construction cost per square foot increases as the quality of the structure increases and decreases as the size increases. Style also affects construction cost per square foot. The base cost to construct a one story, average quality, 2000 square foot residence is higher than the cost to construct a two story, average quality, 2000 square foot residence.<sup>12</sup> For these reasons, the Subject Property would be expected to have a higher per square foot value than homes of lower quality, less expensive styles of construction, or greater square footage.
15. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>13</sup>
16. “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>14</sup>
17. The Taxpayer did not present the 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 characteristics, amenities or features of these other properties, such as style of construction, quality of construction, condition, basement size, finished basement square footage, walkout basements, brick veneer, garage size, outbuildings, decks, swimming pools, patios, fireplaces, etc., to determine if the improvements are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>15</sup>
18. 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.
19. 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>12</sup> Marshall & Swift/Boeckh LLC, Residential Cost Handbook,(12/2009 -12/2010) at Avg-19-21.

<sup>13</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>14</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>15</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.*

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	\$ 92,900
<u>Improvements</u>	<u>\$245,700</u>
Total	\$338,600

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).
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 4, 2020.

Signed and Sealed: February 4, 2020

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Steven A. Keetle, Commissioner