

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

Carl J. Macchietto,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0298

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 2,391 square foot two-and-one-half story residence, with a legal description of: Loveland Add Lot 9 Block 18 99.8 X 194.1, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$361,900 for tax year 2017.
3. Carl J. Macchietto (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$361,900 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 August 19, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Carl J. Macchietto 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 per square foot assessed value of the Subject Property was higher than other comparable properties.
17. The Taxpayer presented and discussed charts with information about the assessed value of the Subject Property and other properties located near the Subject Property for the tax year at issue as well as other tax years. The Taxpayer also presented a chart with information regarding recent sales in the area of the Subject Property.
18. The present appeal is of the County Board’s determination of the 2017 assessed value and the Commission’s authority in this appeal is limited to the valuation for that tax year.<sup>9</sup>
19. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
20. “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

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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).

<sup>9</sup> See, e.g., *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).

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

comparable is made more like the subject, its price is brought closer to the subject's unknown value."<sup>11</sup>

21. The Taxpayer did not provide the Property Record File (PRF) for the properties on the charts. Instead, he provided information from the County Assessor's web site regarding the 2018 assessments of 10 properties located on South 79<sup>th</sup> Street and one located on South 80<sup>th</sup> Street.<sup>12</sup> The information presented regarding the sold properties was limited to the address, square footage, sale price, sale date and year built. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as style, size, quality, condition, improved basement square footage, garages, porches, decks, 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>
22. The information provided from the County Assessor's web site shows that the other properties are of different quality and condition ratings than the Subject Property and have different characteristics and amenities, which would impact their per square foot assessed values.
23. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.
24. The Taxpayer alleged that the assessed value of the land component of the Subject Property was not assessed the same as other comparable property.
25. The information from the County Assessor's web site shows that the land values increase as the size of the lot increases. Of the six properties that are listed as .44 acres in size, five are 193 x 100, while the Subject Property is 194 x 100, which accounts for the \$500 difference in its land value.
26. The Taxpayer alleged that the size and configuration of the garage, the single bath/shower, the condition of the asbestos roof, kitchen finish, size of the dining room, and third floor finish would all negatively impact the value of the Subject Property.
27. The Taxpayer provided descriptions and pictures of these items but did not provide information that would allow the Commission to quantify the impact of these items on the value of the Subject Property.

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<sup>11</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>12</sup> The Commission is unable to determine if there were any changes to characteristics of any of the other properties from the 2017 assessment to the 2018 assessment based on the information presented, although some of their values changed.

<sup>13</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 2, 2019, 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.*

28. 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.
29. 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:

Land	\$ 92,200
<u>Improvements</u>	<u>\$269,700</u>
Total	\$361,900

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 July 17, 2020.

Signed and Sealed: July 17, 2020

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Steven A. Keetle, Commissioner