

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

Dean D. Rauen, et al.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0408

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 1,788 square foot tri-level style residence, with a legal description of: Pheasant Run Lot 112 Block 0 70 x 125, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$158,700 for tax year 2017.
3. Dean D. Rauen (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 \$158,700 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 23, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Dean D. Rauen was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) and Thomas Cheslak of the Douglas County Assessor/Register of Deeds Office were 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>

<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 value of the residence on the property was too high due to the condition of the property.
17. The Taxpayer discussed the condition of the exterior and interior of the Subject Property. The Taxpayer specifically talked about the functionality and condition of the in ground swimming pool located on the Subject Property.
18. The County Board presented the Property Record File (PRF) for the Subject Property as well as a table regarding all of 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 those areas, including the Subject Property.
19. The County Appraiser indicated that after reviewing all of the information presented at the hearing regarding the Subject Property, including the PRF, the sales in the economic area of the Subject Property, and information from an inspection of the Subject Property in 2018, his opinion of value for the Subject Property as of the assessment date was

---

<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).

\$32,000 for the land component and \$67,400 for the improvement components for a total assessed value of \$99,400.

20. The Commission finds and determines that the value of the Subject Property for tax year 2017 is \$99,400.
21. 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.
22. 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	\$32,000
<u>Improvements</u>	<u>\$67,400</u>
Total	\$99,400

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 June 5, 2020.

Signed and Sealed: June 5, 2020

---

Steven A. Keetle, Commissioner