

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

Michael C. Luebbert et al.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0501

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 1,314 square foot raised ranch residence, with a legal description of: Armbrusts Rockbrook Lot 131 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$152,400 for tax year 2017.
3. Michael C. Luebbert protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$133,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$147,500 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. Michael C. Luebbert and Samantha Delagarza (the Taxpayers) were 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 Taxpayers allege that the per square foot assessed value of the Subject Property is not equalized with comparable properties.
17. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
18. “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>10</sup>
19. The Taxpayers presented a table listing the Subject Property and fifteen other properties located near the Subject Property. Along with the chart, the Taxpayers provided information from the County Assessor’s web site regarding the Subject Property and several of the fifteen properties listed on the Taxpayers’ table.

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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 generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>10</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

20. The County Board presented the Property Record File 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.
21. The information presented by the Taxpayers indicates that the Subject Property is the only property that is of brick construction, a higher cost construction style than all of the other properties presented. Additionally, the Subject Property is one of only two raised ranch properties presented that has a sprinkler system. Finally, the information presented indicates that half of the properties presented back up to Interstate-80 and their land values have a negative influence applied to their valuations.
22. The Taxpayers did not present the Property Record Files (PRF) for the parcels that they 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 to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>11</sup>
23. The Taxpayers have not demonstrated that the valuations of similarly situated properties were set at materially different levels.
24. The Taxpayers have not demonstrated that the assessed value of the Subject Property is not equalized with comparable properties.
25. The Taxpayers alleged that the amount of changes to the assessed value of the Subject Property in the prior tax years demonstrate that the value is unreasonable.
26. 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>12</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>13</sup>
27. The Taxpayers have 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.
28. The Taxpayers have 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>11</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>12</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>13</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).

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	\$ 33,000
<u>Improvements</u>	<u>\$114,500</u>
Total	\$147,500

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