

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

630 S 68 Avenue LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0390

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

Background

1. The Subject Property is a ranch style residential property, with a legal description of: Mel-Aire, Lot 28 Block 3, S 24 ft Lt 27 & N 38ft., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$102,400 for tax year 2017.
3. 630 S 68 Avenue LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$77,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$92,800 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 January 23, 2019, at the Omaha State Office Building, 1313 Farnam, Room E (301E), Omaha, Nebraska, before Commissioner Steven Keetle.
7. Donald and Debra Groesser was present at the hearing for the Taxpayer.
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 characteristics of the Subject Property as listed in the Property Record File (PRF) were incorrect, resulting an assessed value that was too high.
17. The Taxpayer presented interior and exterior photographs of the Subject Property and the characteristics of the Subject Property were discussed by the Taxpayers and the County Appraiser.
18. The PRF indicates that the Subject Property was remodeled in 1988 but the photographs and statements from the Taxpayer indicate that is incorrect. The County Appraiser stated that the remodeling of a property would reduce the effective age of that property in the County’s assessment model. The PRF for the Subject Property indicates that the effective age is 64, which is the actual age of the Subject Property. This demonstrates that the notation of a remodel of the Subject Property was not considered when determining its assessed value for tax year 2017.
19. From the information presented the actual square footage of the living area of the Subject Property is 1,014 square feet, and the enclosed solid wall porch is 286 square feet. The Subject Property does not have central heating and air conditioning.

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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).

20. The Commission finds that by adjusting the market calculation detail found in the PRF of the Subject Property for the correct square footage and removing the central heating and air, the assessed value of the Subject Property for tax year 2017 is \$86,100.<sup>9</sup>
21. The Taxpayer alleged that the assessed value of the Subject Property was higher than other comparable properties and presented information about several other properties to demonstrate that point.
22. After the changes to the assessed value of the Subject Property for the correct characteristics, the assessed value of the Subject Property is lower than any of the other properties presented as comparable properties.
23. 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.
24. 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	\$17,200
<u>Improvements</u>	<u>\$68,900</u>
Total	\$86,100

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.

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<sup>9</sup> The value of the Subject Property is calculated based on the following characteristics and values: 1,014 square feet of above ground living area at \$45 per square foot = \$45,630, 286 square feet of enclosed solid wall porch at \$18 per square foot = 5,148, Ranch style factor of \$4,500, one bathroom at \$2,700, 1,014 square feet of masonry construction at \$9 per square foot = \$9,126, a market age deduction of -\$16,000, and a constant factor of \$20,000 would result in a value of \$71,104 (\$45,630 + \$5,148 + \$4,500 + \$2,700 + \$9,126 -\$16,000 + \$20,000). Adjusting by the neighborhood factor of .97 would result in an improvement value of \$68,971 (\$71,104 \* .97) adding the land value of \$17,163 would result in a total assessed value of \$86,134 which rounds to \$86,100.

7. This Decision and Order is effective on December 3, 2019.

Signed and Sealed: December 3, 2019

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Steven A. Keetle, Commissioner