

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

Randy J. Johnson,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0446

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

Background

1. The Subject Property is residential parcel improved with a 1,564 square foot ranch style residence, with a legal description of: Florence Lot 18 Block 102 Vac S & Alley Adj All Irreg Lts 16-17 & 18 Blk 102 Florence Add, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$130,900 for tax year 2017.
3. Randy J. Johnson (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 \$130,900 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 February 11, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Randy J. Johnson 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>
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 assessed value of the Subject Property is too high based on recent home sales in the area.
17. The Taxpayer presented the Property Record Files (PRF) for five parcels located near the Subject Property.
18. Three of these properties sold in 2016: one with a ratio of the sale price to the assessed value (sale/assessment ratio) of 88%, one with a sale/assessment ratio of 98%, and one with a sale/assessment ratio of 134%.
19. The County Board presented a list of the qualified sales that occurred in the economic area of the Subject Property. The County Board’s list of properties also included the three sales presented by the Taxpayer.
20. The sales presented do not support the Taxpayers contention that recent home sales demonstrate the assessed value of the Subject Property is too high.
21. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with the assessed values other nearby comparable properties.
22. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>

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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).

23. “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>
24. The Subject Property is a 1,564 square foot ranch style property in the Florence Subdivision built in 1932, with an addition added in 1952. The Subject Property is of fair quality and average condition. The Subject Property is located on a .61 acre lot on the corner of Grebe Street (Gravel) and Northridge Drive (Paved). The Subject Property has a 720 square foot detached garage with a driveway that borders on the unpaved Grebe Street. The Subject Property has a walkout basement with 984 square feet of finish.
25. Four of the properties presented by the Taxpayer are located on Northridge Drive and one is located several blocks away on State Street. The properties have a variety of construction styles: ranch with a walkout basement, tri-levels, a split level with a walkout basement, and a one and one-half story. These properties were built between 1908 and 1972 and have quality ratings of good, fair, or average, and they have condition ratings of fair or average. They are situated on lots between 0.15 and 2.41 acres in size. One of the properties has an attached garage; one had a detached garage; one has a basement single stall garage, and two have basement double stall garages.
26. The Taxpayer alleged that the property that is located several blocks away on State Street is undervalued as compared to the Subject Property. The State Street property has a higher assessed value than the Subject Property. The State Street property has more above ground square footage in one and one-half story stucco and tile roof construction style while the Subject Property is a ranch with vinyl siding and a composition shingle roof. The State Street property was built in 1908 while the Subject Property was built in 1932 with a 1952 addition. The State Street Property is located on a significantly larger lot with a detached garage, a bath house, and a pool, but only limited basement finish.
27. The PRFs presented demonstrate that the differences in per square foot assessments between the Subject Property and the five other properties presented, including the State Street Property, can be attributed to differences in the characteristics of the properties such as style of construction, age, size, quality and condition, basement size, amount and quality of basement finish, garage size and location, patios and decks, etc. Due to these differences between the Subject Property and the properties offered by the Taxpayer, the Commission is not able to determine that the properties are comparable properties or what adjustments are necessary to make them comparable properties for purposes of determining equalized values.
28. The Taxpayer has not presented information to demonstrate that the value of the Subject Property was not equalized with other comparable properties
29. The Taxpayer alleged that the gravel road, wooded lot to the north of the Subject Property, and unmaintained lot to the east of the Subject Property reduce the value of the

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

Subject Property. The Taxpayer did not present information sufficient to allow the Commission to quantify the impact of these conditions on the value of the Subject Property.

30. 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.
31. 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	\$ 18,700
<u>Improvements</u>	<u>\$112,200</u>
Total	\$130,900

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 February 26, 2020.

Signed and Sealed: February 26, 2020

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Steven A. Keetle, Commissioner