

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Quality Living, Inc.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18C 0275

Decision and Order Reversing  
County Board of Equalization

### Background

1. The Subject Property is a vacant commercial lot, with a legal description of: Immanuel South Lot 4 Block 0 Irreg 2.253 AC.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$1,177,700 for tax year 2018.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$270,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$712,000 for tax year 2018.
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 14, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Rich Greene, Attorney, was present at the hearing for the Taxpayer.
8. Jennifer D. Chrystal-Clark, County Attorney, 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 sufficient competent evidence to justify its action."<sup>3</sup> That presumption "remains until

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<sup>1</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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. Todd Schuiteman, Vice President and CFO of Quality Living, Inc., stated an appraisal was done of the Subject Property as well as five other properties owned by the Taxpayer. In the course of its annual protest proceedings, the County Board accepted the value indicated by the appraisal for all the properties except the Subject Property.
17. According to Mr. Schuiteman, the County Board accepted the recommendation of the referee not to change the value of the Subject Property; the referee made this recommendation because he felt the Taxpayer’s appraiser made an error in square footage. The Taxpayer’s appraiser stated in his appraisal that only 37,000 square feet of the 98,141 square foot parcel had any actual value due to a large easement by the City of Omaha covering 61,141 square feet. The Taxpayer’s appraiser valued the Subject Property at \$7.25 per square foot for the 37,000 square feet of usable area.
18. The Taxpayer contacted its appraiser to clarify how many square feet are contained in the Subject Property and if his opinion of value was for the entire parcel. The Taxpayer’s appraiser affirmed he valued only 37,000 square feet of the Subject Property as he felt that was the only usable portion of the parcel. The 61,141 square foot easement is a steep and mostly tree-covered area with tight restrictions; these conditions make it an unusable area for the Taxpayer that would not contribute value to the Subject Property.

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<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. County 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).

19. Mr. Schuiteman stated the Taxpayer has not received any payments for the easement; he did not know if the previous owner received any payment for the easement. Mr. Schuiteman asserted the Taxpayer has no plans to build on the usable portion of the Subject Property; it was purchased because it added to the nearby property owned by the Taxpayer.
20. The Appraiser stated the portion of the Subject Property characterized by the Taxpayer as unusable could be considered “greenspace” to the nearby property owned by the Taxpayer. The Appraiser asserted that all real property must have a value attributed to it per statute; therefore he does not agree with the Taxpayer’s appraiser’s assertion that there is no value to the portion of the property subject to the easement.
21. Keith Nielsen, who appraised the Subject Property for the County Board (the Appraiser) developed a value for the Subject Property with consideration for the limited use of the easement. The Appraiser stated he placed a higher per square foot value on the 37,000 square feet of usable area and placed a much lower value per square foot for the easement area.
22. The result of the Appraiser’s valuation method would conclude with a per square foot value of the entire parcel of \$5.88 per square foot or \$577,069.08, rounded to \$577,070. In the Account Notes provided by the County, the Appraiser deducted 75% for sloping and grading concerns and stated sales of properties with frontage on 72<sup>nd</sup> Street support valuation of \$10 to \$14 per square foot. After adjustments to the easement portion, the Appraiser felt \$5.88 per square foot for the entire property would be a better reflection of market value.
23. Although the Taxpayer’s appraisal constitutes competent evidence to rebut the presumption in favor of the County Board,<sup>9</sup> the Commission was not convinced that the easement portion of the Subject Property was of zero value to the property and therefore considered the Appraiser’s method of value the best evidence of value.
24. 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.
25. 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 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

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<sup>9</sup> See *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

Total \$577,070

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 2018.
7. This Decision and Order is effective on August 23, 2019.

Signed and Sealed: August 23, 2019

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James D. Kuhn, Commissioner