

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

Belamini Properties, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 18C 0508, 19C 0517,  
18C 0509 & 19C 0515

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Properties are vacant commercial lots, with legal descriptions of:

<b>18C 0508 &amp; 19C 0517</b>	<b>18C 0509 &amp; 19C 0515</b>
Kountze & Ruths Add Lot 5 Block 4 E1/2 LT 5 Block 4 50 X 80	Kountze & Ruths Add Lot 7 Block 4 All LTS 6 & 7 Block 4 100 X 160

2. The Douglas County Assessor (the Assessor) assessed the Subject Properties at

<b>18C 0508 &amp; 19C 0517</b>	<b>18C 0509 &amp; 19C 0515</b>
\$25,000	\$128,000

for tax years 2018 and 2019.

3. Belamini Properties LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessments for tax years 2018 and 2019.

4. The County Board determined that the taxable value of the Subject Properties was

<b>18C 0508 &amp; 19C 0517</b>	<b>18C 0509 &amp; 19C 0515</b>
\$25,000	\$128,000

for tax years 2018 and 2019.

5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on September 4, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Michael J. Walz was present at the hearing for the Taxpayer.
8. Stan Mlotek (the 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>

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

10. The Commission's review of a 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 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 stated the increases in values of the Subject Properties was too large for what he believed the actual market value was. The Taxpayer stated that the correctional facility near the properties was a negative influence.
17. The Taxpayer stated there is no paving on the Subject Properties and building on the smaller vacant lot (18C 0508 & 19C 0517) would be difficult due to the smaller size of the lot.
18. The Appraiser stated he has strong sales in the Central Business District (CBD) based on recent sales. The Appraiser stated there was a re-appraisal of the unimproved lots in the CBD in 2017 which resulted in rising land valuations for the neighborhood. The

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<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).

<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).

Appraiser asserted the CBD is a growing neighborhood due to the proximity to downtown Omaha.

19. The Taxpayer failed to quantify the impact the correctional facility has on the value of the Subject Properties. The Taxpayer did not provide any evidence to show the Subject Properties are being valued unfairly or being treated differently than other vacant properties in the CBD neighborhood.
20. 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.
21. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax years 2018 and 2019 are affirmed.
2. The taxable value of the Subject Properties for tax years 2018 and 2019 is:

<b>18C 0508 &amp; 19C 0517</b>	<b>18C 0509 &amp; 19C 0515</b>
<b>\$25,000</b>	<b>\$128,000</b>

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 years 2018 and 2019.
7. This Decision and Order is effective on February 17, 2021.

Signed and Sealed: February 17, 2021

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James D. Kuhn, Commissioner