

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

Thomas A. Townsend,  
Appellant,

v.

Washington County Board of Equalization,  
Appellee.

Case Nos: 18R 0093 & 19R 0002

Decision and Order Affirming the Decisions  
of the Washington County Board of  
Equalization

**For the Appellant:**

Thomas A. Townsend,  
Pro Se

**For the Appellee:**

Desirae M. Solomon,  
Deputy Washington County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Washington County, Nebraska, improved with a 3,138 square foot residence. The legal description and property record card for the Subject Property are found at Exhibit 2:44-100.

**II. PROCEDURAL HISTORY**

The Washington County Assessor determined that the assessed value of the Subject Property was \$475,960 for tax year 2018. Thomas A. Townsend (the Taxpayer) protested this assessment to the Washington County Board of Equalization (the County Board) and requested an assessed valuation of \$434,145. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$475,960, consisting of \$65,000 for the land and \$410,960 for the improvements.<sup>1</sup>

The Washington County Assessor determined that the assessed value of the Subject Property was \$504,125 for tax year 2019. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$440,000. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$504,125, consisting of \$65,000 for the land and \$439,125 for the improvements.<sup>2</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Case file.

The Taxpayer appealed these decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission issued an Order for Hearing and Notice of Hearing on June 5, 2019, scheduling a hearing for September 27, 2019, on Case No. 18R 0093, which relates to the taxable value of the Subject Property for tax year 2018. The Commission held a hearing on September 27, 2019, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. At the time of the hearing, the parties stipulated to the consolidation of the noticed hearing with a hearing on Case No. 19R 0002, an appeal filed on August 5, 2019, which relates to the taxable value of the Subject Property for tax year 2019. Exhibits 1 through 3 were offered and admitted without objection.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is *de novo*.<sup>3</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>4</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>5</sup>

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

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<sup>3</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>4</sup> *Brenner* at 283, 811 (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>8</sup> The County Board need not put on any evidence to support its valuation of the Subject Property unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>9</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>10</sup> The Commission may also take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### IV. APPLICABLE LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>14</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed

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<sup>8</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 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 County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>9</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> *Id.*

<sup>15</sup> *Omaha Country Club* at 180, 829 (2002).

value.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

## V. FINDINGS OF FACT

The Taxpayer has been the resident owner of the Subject Property since it was built in 2013. The Taxpayer is a general contractor and did much of the building work on the Subject Property himself. The Subject Property was assessed at \$414,935 in tax year 2014; the assessment increased slightly for tax years 2015 and 2016 before increasing to \$500,830 for tax year 2017, an amount subsequently lowered by the County Board to \$434,145.<sup>19</sup>

The Subject Property is a timber frame home, which means that it has exposed timbers outside and inside. The home appears tall, due to this style of construction, but it has only two bedrooms, with standard contractor windows and doors, standard trim and standard flooring. No changes have been made to the Subject Property in the past four years. The Taxpayer relied upon an Exhibit offered by the County Board entitled “Criteria for Residential Construction Quality,” which listed criteria for classifying the quality of residences as Fair, Average, Good, Very Good, or Excellent.<sup>20</sup> The Subject Property does not meet most of the criteria for Very Good quality. The record does not indicate the source of this document or what authority it might have among professional appraisers or assessors.

Steven Mencke has been the County Assessor for Washington County for sixteen years. He holds the State Assessor’s Certificate, and receives approximately 60 hours of appraisal training every four years. In assessing real property, he relies upon the guidance of the Property Tax Administrator, state statutes, regulations, and the sales file maintained by the state. The sales file indicates that the value of residential property in Washington County has been increasing substantially over the past few years. By statute, the assessed-to-sale ratio for residential real property must be within a range of 92% to 100%.<sup>21</sup> For tax year 2018, the ratio for Washington County fell below this range and Mencke applied a valuation increase to the improvement

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<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> Exhibit 2:44.

<sup>20</sup> Exhibit 2:35-36.

<sup>21</sup> Testimony of Mencke, see also Neb. Rev. Stat. § 77-5023(2)(c) (Reissue 2018).

component of residential real property to bring the class into compliance. According to Mencke, the assessed values of the improvements on the Subject Property and neighboring residences were increased by approximately 11% as part of this increase.<sup>22</sup> Mencke did not apply this increase to the village of Herman, Nebraska, because the available statistical data was insufficient to support such an increase for the village. The Subject Property is located on the southern side of Washington County, relatively close to Omaha; property values in the county increase with proximity to Omaha.

The cost approach to value was used to assess the Subject Property for tax years 2018 and 2019; Mencke testified that every home in Washington County was assessed using the same methodology. The cost approach operates by determining the cost to construct a property new and then deducting physical depreciation and, if appropriate, functional and economic obsolescence.<sup>23</sup> The quality of construction and condition of a building affect its market value and are evaluated in the course of appraising the property.<sup>24</sup>

In Washington County, quality and condition ratings are determined by Mencke or his employees. For tax year 2017, the Subject Property's quality was initially rated as Very Good + following an exterior inspection. After the Taxpayer filed a protest with the County Board, an interior inspection was conducted and the quality rating was reduced to Very Good; this was the last interior inspection of the Subject Property before the Commission's hearing.<sup>25</sup> For tax years 2018 and 2019, the quality of the Subject Property was rated as Very Good and the condition as Good.<sup>26</sup> Mencke did not use the "Criteria for Residential Construction Quality" guidelines in determining the quality or condition rating of the Subject Property.

For tax year 2018, the cost approach indicated a value of \$410,960 for the improvements and \$65,000 for the land, a total of \$475,960.<sup>27</sup> For tax year 2019, the cost approach indicated a value of \$439,125 for the improvements and \$65,000 for the land, a total of \$504,125. The County Assessor applied a "cost factor" of 1 for 2018, and 1.07 for 2019. Mencke testified that these cost factors were determined based on sales in the market and then used as multipliers for the cost

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<sup>22</sup> The assessed value of the improvement component of the Subject Property increased from \$369,145 in 2017 to \$410,960 in 2018, which is 11.33%. See Exhibit 2:44.

<sup>23</sup> See generally, The Appraisal Institute, *The Appraisal of Real Estate* 561-579 (14th ed. 2013).

<sup>24</sup> *Id.* at 271-274.

<sup>25</sup> The property record file indicates that the last inspection of the Subject Property occurred in 2016, but both Mencke and the Taxpayer testified that the interior of the Subject Property was inspected while the Taxpayer's 2017 protest was pending, *i.e.*, between approximately June 1 and July 25, 2017. See Neb. Rev. Stat. § 77-1502(1).

<sup>26</sup> All information in this paragraph is taken from the testimony of Mencke and Exhibits 2:52-2:53 (2018) and 2:49-2:51 (2019).

<sup>27</sup> All information in this paragraph is taken from the testimony of Mencke and Exhibits 2:52-2:53 (2018) and 2:49-2:51 (2019).

approach value. Mencke further testified that these cost factors were applied evenly to properties across the county.

In the course of the protest proceedings, the Taxpayer submitted property record files (PRFs) for properties he considered comparable to the Subject Property; these were subsequently offered as exhibits by the County Board at the Commission’s hearing.<sup>28</sup> The relevant details of square feet above grade, style, quality, condition, garage size (in square feet), recent sale price, and year built are listed in the table below.

|                        | Sq. Ft. | Style     | Quality   | Cond.     | Garage | Sale      | Built |
|------------------------|---------|-----------|-----------|-----------|--------|-----------|-------|
| Subject <sup>29</sup>  | 3,138   | 1.5 Story | Very Good | Good      | 1,372  | N/A       | 2013  |
| Plott <sup>30</sup>    | 2,062   | 1 Story   | Average + | Average + | 960    | \$250,000 | 1993  |
| Bickford <sup>31</sup> | 1,646   | 1 Story   | Good      | Average + | 484    | \$294,000 | 1978  |
| Knobbe <sup>32</sup>   | 2,878   | 2 Story   | Good +    | Average + | 775    | \$380,000 | 1998  |
| Merrill <sup>33</sup>  | 2,218   | 1 story   | Good +    | Average + | 1,280  | \$390,000 | 1999  |

## VI. ANALYSIS

As noted above, the initial burden of proof in this appeal is on the Taxpayer to present competent evidence to rebut the presumption that the County Board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. If the presumption is rebutted, the burden remains on the Taxpayer to prove, by clear and convincing evidence, that the decision of the County Board was arbitrary or unreasonable. Although the Taxpayer asserted that inconsistencies and inequitable treatment occurred in the assessment of the Subject Property, the evidence adduced at the hearing does not support those assertions.

The Taxpayer requested that the 2018 and 2019 valuations be set at the same level as the 2017 assessment, \$434,145. It is well established under Nebraska law that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>34</sup> The difference between the 2017 and 2018 assessed values is the approximate 11% increase to the

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<sup>28</sup> See Exhibits 2:20-2:30.

<sup>29</sup> Exhibit 2:49-2:50.

<sup>30</sup> Exhibit 2:20-2:22. This garage is listed as detached in the PRF. Exhibit 2:21.

<sup>31</sup> Exhibit 2:23-2:26.

<sup>32</sup> Exhibit 2:27-2:28. This garage is listed as built-in in the PRF. Exhibit 2:28.

<sup>33</sup> Exhibit 2:29-2:30.

<sup>34</sup> See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

value of the improvements, and the difference between the 2018 and 2019 assessed values appears to be the application of the 1.07% cost multiplier in the cost approach.<sup>35</sup> Mencke testified that each of these changes were applied evenly throughout the county except for one village with insufficient statistical data to support a change. The record does not show that the application of these increases resulted in either values that were not uniform and proportionate, or values that did not reflect the actual value of the properties assessed.

There is also insufficient evidence to show that the quality and condition ratings assigned by Mencke or his employees are incorrect. Although the Subject Property did not meet most of the criteria for Very Good quality under the “Criteria for Residential Construction Quality” relied upon by the Taxpayer, the record does not indicate what authority they might have among professional appraisers or assessors. Under Nebraska law, actual value must be determined using professionally accepted mass appraisal techniques,<sup>36</sup> and the Taxpayer has not proven that the quality criteria he relied upon are consistent with professionally accepted mass appraisal standards.

Finally, the Taxpayer’s alleged comparable properties do not prove that the Subject Property is either overvalued or dis-equalized with similar properties. As shown in the table above, the Subject Property is larger and newer, with higher quality and condition ratings, and with a larger garage, than any of the properties offered by the Taxpayer as comparable properties. These properties are not truly comparable to the Subject Property because the Subject Property is superior to the comparables in almost every respect.

## **VII. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board should be affirmed.

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<sup>35</sup> The 2019 improvement value, \$439,125, is 1.0685% of the 2018 improvement value, \$410,900.

<sup>36</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

**VIII. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Washington County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

|                     |                  |
|---------------------|------------------|
| Land                | \$ 65,000        |
| <u>Improvements</u> | <u>\$410,960</u> |
| Total               | \$475,960        |

3. The taxable value of the Subject Property for tax year 2019 is:

|                     |                  |
|---------------------|------------------|
| Land                | \$ 65,000        |
| <u>Improvements</u> | <u>\$439,125</u> |
| Total               | \$504,125        |

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Washington County Treasurer and the Washington County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2018 and 2019.
8. This Decision and Order is effective for purposes of appeal on February 10, 2021.<sup>37</sup>

Signed and Sealed: February 10, 2021

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

<sup>37</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.