

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

Philip C. O'Halloran,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18R 0247

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

**Background**

1. The Subject Property is a residential property improved with a 1,453 square foot split entry style residence, with a legal description of: Wycliffe Replat Lot 322 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$147,300 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 \$136,466 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$147,300 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 November 8, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Philip C. O'Halloran 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 a determination of the County Board of Equalization is de novo.<sup>2</sup>

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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).

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 alleged that the assessed value of the Subject Property was not equalized with other comparable homes.
17. The Taxpayer presented partial information from the County Assessor’s web site regarding four properties on Westchester Circle that he alleged were comparable to the Subject Property.
18. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
19. “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>
20. The County Board presented the Property Record Files (PRF) for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the

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<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).

<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

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

Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.

21. The Taxpayer stated that the four properties presented had the same floorplan as the Subject Property but were all rated average condition.
22. The PRF for the Subject Property indicates that it has a condition rating of fair.
23. The partial information regarding the four properties on Westchester Circle did not contain information regarding the characteristics and features of those properties such as age, basement size and finish, sprinkler systems, decks, patios, fireplaces, etc.
24. The Taxpayer did not present the PRF for any of the properties presented for valuation or equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as quality, condition, amount and type of basement finish, etc.<sup>11</sup>
25. The Commission finds and determines that the four Westchester Circle properties presented by the Taxpayer are not comparable to the Subject Property.
26. The Taxpayer alleged that the assessed value of the Subject Property is negatively impacted by the poorly maintained property next door.
27. The Taxpayer presented pictures of the exterior of the property next door.
28. The Taxpayer did not present any information to quantify the impact of the presence of a poorly maintained property next door on the market value of the Subject Property.
29. The Taxpayer alleged that the assessed value of the Subject Property should be reduced because it was reduced from the value determined by the County Assessor in prior tax years.
30. The Taxpayer did not present the basis of either the County Assessor's assessed value determinations in the prior assessment years or the basis of the County Board's reduction of that value for the prior assessment years.
31. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>12</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>13</sup>
32. 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.

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<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 16, 2019, includes the following:

**NOTE:** *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

<sup>12</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>13</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

33. 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 26,600
<u>Improvements</u>	<u>\$120,700</u>
Total	\$147,300

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 January 29, 2021.

Signed and Sealed: January 29, 2021

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Steven A. Keetle, Commissioner