

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

Paul K. Taylor,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18R 0364

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a single family residence, with a legal description of: Raven Oaks Lot 30 Block 2 95x130.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$322,300 for tax year 2018.
3. Paul K. Taylor (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$322,300 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 January 14, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Paul K. Taylor was present at the hearing.
8. Stan Mlotek (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 sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until

<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. The Taxpayer feels the increase in assessment of the Subject Property from tax year 2017 to tax year 2018 is exorbitant. The Subject Property was assessed at \$208,200 in 2017 but increased to \$322,200 for 2018. The Taxpayer stated that no improvements have been made to the Subject Property to garner such an increase.
17. The Taxpayer asserted the Subject Property has a three-tier backyard, which does not provide much of a backyard for normal usage. The Taxpayer purchased the Subject Property to be near his children and grandchildren.
18. The County Appraiser stated the Subject Property was in a neighborhood that was reappraised in 2018. The Appraiser asserted that the Subject Property was a good example of why the reappraisal of the neighborhood was needed, since the Subject Property was purchased in 2017 for \$325,000, well above the \$208,200 assessment. The Taxpayer countered that he feels he paid a premium price to be near his children and grandchildren and does not feel the Subject Property would be worth that amount to a normal buyer.
19. The Taxpayer provided Property Record Files (PRF) for two allegedly comparable properties. One of these was an agricultural property with an attached barn and nearly 40 acres of land; this property is clearly not comparable to the Subject Property and the Commission did not give any weight to this evidence. The second property offered (the

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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).

Smidt property) was a residential property with the same quality and condition rating and similar square footages; however, the Smidt property had minimal finish in the basement whereas the Subject Property has 1,300 square foot of finish in the basement. Documents offered at the hearing also indicate that the Smidt property was built in 1968, as opposed to the Subject Property, which was built in 1996. The documents further indicate that the properties have different exterior siding, fixtures, and other amenities. The Taxpayer provided no information to determine the impact upon market value of the differences in basement finish and other amenities between the Smidt property and the Subject Property. The Taxpayer also provided a hand written spreadsheet with six presumable comparable properties, but no PRFs were provided to show if these were actually comparable properties.

20. The Appraiser stated the Subject Property was valued using the cost approach. The cost approach is an appraisal method that determines the cost of rebuilding the property with new costing tables and then applying depreciation for factors such as age, quality, and condition to arrive at a Replacement Cost New Less Depreciation (RCNLD). The Appraiser stated the reassessment was the reason for the large increase in value to the Subject Property.
21. The Taxpayer stated one of the biggest reasons to lower the 2018 value was due to the fact that the County Board lowered his 2019 assessment. Under Nebraska law, the assessed value for real property may be different from year to year, dependent upon the circumstances. For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>9</sup> Moreover, the burden of proof upon a protesting taxpayer in proceedings before the County Board is lower than the burden of proof in hearings before this Commission.<sup>10</sup> The evidence before the Commission is not sufficient to explain the County Board's decision to reduce the assessed value of the Subject Property for 2019 or to merit a similar reduction for tax year 2018.
22. 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.
23. 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:

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<sup>9</sup> *Affiliated Foods Coop. v. Madison County Bd. of Equal.*, 229 Neb. 605, 428 N.W.2d 201 (1988).

<sup>10</sup> See, e.g., *Cain v. Custer County Bd. of Equal.*, 291 Neb. 730, 868 N.W.2d 334 (2015) and *Cain v. Custer County Bd. of Equal.*, 298 Neb. 834, 906 N.W.2d 285 (2018).

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:

Total \$322,300

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 24, 2020.

Signed and Sealed: January 24, 2020

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James D. Kuhn, Commissioner