

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Grant M. Gowen,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0029

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

### Background

1. The Subject Property is a residential parcel improved with a 5,455 square foot two story residence, with a legal description of: Bluewater Lot 176 Block 0 Lot 176 26006 SqFt – Excess Value –, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$957,900 for tax year 2019.
3. Grant M. Gowen (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$900,000 for tax year 2019.
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 May 26, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keettle.
7. Grant M. Gowen was present at the hearing.
8. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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

1. The Taxpayer alleges that the increase in the assessed value from the prior year’s assessment is excessive, unreasonable, and arbitrary.
2. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>10</sup>
3. The Taxpayer alleged that the square footage of the Subject Property is 4,939 square feet and the square footage utilized by the County Assessor is incorrect.
4. The Taxpayer presented a copy of blueprints for the Subject Property.
5. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and 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 *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</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).

- Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
6. The PRF contains a diagram of the Subject Property showing the total square footage of the Subject Property as 5,455 square feet. The Subject Property has no basement.
  7. The blueprints provided by the Taxpayer show the total square footage of the Subject Property at slightly more than 5,455 square feet,<sup>11</sup> supporting the square footage of the Subject Property shown on the PRF and utilized by the County Board.
  8. The Taxpayer alleged that the quality and neighborhood adjustments applied to the Subject Property were not applied to other comparable properties resulting in dis-equalized values.
  9. The Taxpayer presented information from the County Assessor's web site about the Subject Property and four other properties that he alleged were comparable to the Subject Property. The Taxpayer did not present the PRF for these properties.
  10. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
  11. "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>13</sup>
  12. The information presented by the Taxpayer demonstrates that the properties presented are in different subdivisions and have differences in quality, condition, square footage, lack of swimming pool, basement size and finish, and size of garage. The information presented by the Taxpayer does not show the contribution to value of the characteristics of the properties or the quality or neighborhood adjustments applied to these properties.
  13. Without the PRF for the comparable properties, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property.<sup>14</sup>
  14. The County Appraisers stated that the Subject Property's neighborhood and the neighborhoods of the properties offered by the Taxpayer had different make up of property types, quality and condition, which resulted in a different mix of sales and market influences.
  15. Additionally, the County Appraisers stated that the information presented by the Taxpayer from the County Assessor's web site was from a date prior to the setting of the

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<sup>11</sup> The differences in the measurements show on the blueprints and those utilized by the County Assessor are attributed to the County Assessor's office rounding down to the nearest half foot the measurements shown on the blueprints.

<sup>12</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>13</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>14</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on February 18, 2021, 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.*

final values for tax year 2019 and could not be relied on for the 2019 tax year assessments.

16. Comparing the information provided by the Taxpayer to the PRF for the Subject Property shows that the value on the web site printouts was not the value set by the County Assessor or the County Board for tax year 2019.
17. The Commission cannot rely on the web printouts provided by the Taxpayer to show the assessed values for tax year 2019.
18. The County Appraisers stated that the neighborhood and quality adjustments were supported by the recent sales of properties in the same market area as the Subject Property as shown on the list of recent sales. The sales in the different areas may result in different adjustments, but that without information regarding recent sales in other areas they could not state what adjustments would be made in those areas.
19. The Taxpayer has not shown that the assessment of the Subject Property is not equalized with other comparable properties.
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 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$100,000
<u>Improvements</u>	<u>\$800,000</u>
Total	\$900,000

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 2019.
7. This Decision and Order is effective on March 23, 2022.

Signed and Sealed: March 23, 2022

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Steven A. Keettle, Commissioner