

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

Wallace T. Johnson,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0130

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

**Background**

1. The Subject Property is a residential parcel improved with a 5,677 square foot one and one-half story residence, with a legal description of: Armbrust Oaks 2<sup>nd</sup> Lot 20 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$921,600 for tax year 2019.
3. Wallace T. Johnson (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 \$921,600 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 27, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Todd Johnson 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

16. The Taxpayer alleges that the increase in the assessed value from the prior year’s assessment is excessive, unreasonable, and arbitrary.
17. 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>
18. The Taxpayer bought the Subject Property in August 2018 for \$955,000. The Taxpayer alleged that the purchase price of the Subject Property was not market value.
19. 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 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.

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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).

20. The list of qualified sales that occurred in the economic area of the Subject Property does contain the sale of the Subject Property in 2018; however, the assessed value for the Subject Property as determined by the County Board is lower than the purchase price.
21. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the Subject Property.
22. The Taxpayer presented interior photographs of the Subject Property, including finished basement area, utility areas, bathrooms, and light fixtures, and discussed the condition of the Subject Property.
23. The County Board presented photographs of the interior and exterior of the Subject Property from the Multiple Listing Service listing of the Subject Property for the 2018 sale and discussed permit verification and review of the Subject Property for subsequent assessment years.
24. The County Appraisers stated that based on the subsequent inspections, the number of fireplaces in the Subject Property should be reduced from four to two and that the basement finish was fair rather than full finish.
25. The Taxpayer has not shown that the overall quality rating of good for the Subject Property as determined by the County Assessor was unreasonable or arbitrary.
26. The information presented to the Commission does demonstrate that the quality of the basement finish should be fair.
27. The County Appraisers presented a revised replacement cost calculation of \$799,000 for the improvements on the Subject Property, accounting for the reduced number of fireplaces and basement finish quality.
28. The Commission finds and determines that the value of the Subject Property for tax year 2019 is \$911,100, with a land value of \$112,100 and an improvement value of \$799,000.
29. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
30. The Taxpayer has 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$112,100
<u>Improvements</u>	<u>\$799,000</u>
Total	\$911,100

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. Keetle, Commissioner