

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Allison M. Wakin,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 19R 0249 & 20R 0404

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

### Background

1. The Subject Property is a residential parcel improved with a 1,778 square foot ranch style residence, with a legal description of: Greenfields Lot 131 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$270,800 for tax years 2019 and 2020.
3. Allison M. Wakin, et al (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessed values for tax year 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$270,800 for tax years 2019 and 2020.
5. The Taxpayer appealed the determinations 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. Andrew Wakin was present at the hearing for the Taxpayer.
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 alleged that the assessed value of the improvements on the Subject Property were not equalized with other comparable properties on a per square foot basis.
17. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>9</sup>
18. The Taxpayer presented a list of all ranch style properties in the same subdivision as the Subject Property, listing their address, parcel number, quality, condition, land value, improvement square footage, improvement value (with improvement value per square foot), and total value. The Taxpayer obtained this information from the County Assessor’s web site for the 2020 assessment year but stated that it would apply to both tax years as the assessed value of the Subject Property was the same for 2019 and 2020.
19. The Taxpayer’s requested value was determined by averaging the assessed values of the other properties, and then applying the averaged per square foot values to the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted

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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> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

approach for determining the actual value of the Subject Property.<sup>10</sup> Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal method would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.

20. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments[.]"<sup>11</sup>
21. The County Board presented the 2019 and 2020 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.
22. The County Board also presented a list of all ranch style properties in the same subdivision as the Subject Property, which included the amount of basement finish and year built, as well as the assessed value per square foot and the assessed value per square foot with finish. The County Appraisers stated that the assessed value per square foot calculation valued below ground square footage at 1/3 of the value of the above ground square footage.
23. The information presented to the Commission shows that for the ranch style properties in the neighborhood, the Subject Property has 11% more above ground square footage, has 13% more basement finish, and is a year newer than the median property.
24. In addition to the amount of basement finish, the Subject Property has an above ground swimming pool, open slab patio, wood deck and an enclosed solid wall porch that contribute value to its assessment.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
26. "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>
27. The Taxpayer did not provide the PRF for any of the properties presented for 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

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<sup>10</sup> See Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>11</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008).

<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 (4<sup>th</sup> ed. 2007).

such as condition, age, amount and type of basement finish, garages, porches, patios, swimming pools, etc.<sup>14</sup>

28. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
29. The Commission cannot determine that the assessed value of the Subject Property is not equalized with other comparable properties.
30. 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.
31. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

THEREFORE IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 and 2020 is:

Land	\$ 26,900
<u>Improvements</u>	<u>\$243,900</u>
Total	\$270,800

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 years 2019 and 2020.
7. This Decision and Order is effective on April 1, 2022.

Signed and Sealed: April 1, 2022

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Steven A. Keetle, Commissioner

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<sup>14</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 6, 2020, 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.