

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

Julie M. Maass,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0322

**DECISION AND ORDER AFFIRMING  
THE DECISION OF THE DOUGLAS  
COUNTY BOARD OF EQUALIZATION**

**For the Appellant:**  
Paul & Julie Maass,  
Pro Se

**For the Appellee:**  
Jennifer D. Chrystal-Clark,  
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 0.51 acre residential parcel improved with a 5,264 square foot home built in 1998. The legal description and property record card for the Subject Property are found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,576,200 for tax year 2019. Julie and Paul Maass (collectively, the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$1,576,200.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 6, 2021, with Commissioner Hotz presiding. Prior to the hearing, the County Board provided its proposed exhibits to the Taxpayer. The parties did not participate in a pre-hearing conference and no Pre-Hearing Conference Report was submitted. Exhibits 1, 2, and 8 were received. Exhibits 3 through 7 were not received because the Taxpayer did not provide them to the County Board by the deadlines established in the Commission's orders for hearing.

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<sup>1</sup> Ex. 1.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.<sup>2</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board 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>

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> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

The 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> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>8</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

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<sup>2</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner* at 283, 811 (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas County 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 County*, 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 County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.<sup>9</sup> The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### IV. RELEVANT LAW

##### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>12</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>13</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>14</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>17</sup>

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<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>18</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>19</sup> If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.<sup>20</sup>

## V. FINDINGS OF FACT AND ANALYSIS

We begin by briefly addressing the documentary evidence submitted in this matter. The Taxpayer attempted to show that the Subject Property was either overvalued, or not equalized with similar properties, by comparing it with adjacent properties to the North (2105 S 189th Cir., the “Peel Property”), the South (2125 S 189th Cir., the “Athen Property”<sup>21</sup>), and across the street (2114 S 189 Cir., the “Huber Property”). However, neither party offered the Property Record Files (PRF) of these properties into evidence. Instead, the Taxpayer offered printouts from the Douglas County Assessor’s website for these and several other properties. Unlike a PRF, this kind of webpage printout does not contain the full valuation methodology for the property, so the Commission is unable to determine the features and amenities of the property, or how these features and amenities contribute to the property’s assessed value.<sup>22</sup> The majority of these printouts were not admitted into evidence because they were not provided to the County Board until the day of the hearing and the County Board objected that they were not timely submitted per the Commission’s Order for Hearing. A printout for 1606 S 187th Cir. was admitted as Exhibit 8, but we gave it little weight for the reasons described above.

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<sup>18</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>19</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>20</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>21</sup> This property was also referred to as the “Piatkowski property,” after a previous owner, in some testimony.

<sup>22</sup> For this reason, the Order for Hearing and Notice of Hearing issued to the parties on May 10, 2021, contains the following directive and note:

**PROPERTY RECORD FILES:** Each party shall provide, as an exhibit, copies of the county’s Property Record File for any parcel that party will assert is a comparable parcel.

**NOTE:** A screen shot or print out of a 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 before the hearing.

Kurt Skradis and Scott Barnes, employees of the County Assessor, both testified about the assessment process; both stated that the neighborhood of the Subject Property was reappraised for tax year 2019. The County Assessor used a cost approach to assess the improvement component of the Subject Property.<sup>23</sup> After assigning ratings of Excellent quality and Average condition, the replacement cost new (RCN) was determined to be \$1,333,080, including add-on value.<sup>24</sup> The County Assessor utilized a computer assisted mass appraisal system (CAMA) and conducted a multiple regression analysis. A 7.45% depreciation adjustment was made to the RCN, resulting in depreciation of \$99,299 and a replacement cost new less depreciation (RCNLD) of \$1,233,781.<sup>25</sup> The County Assessor then applied a neighborhood adjustment of 1.1033 and a quality adjustment of 1.04 to reflect sales in the local market, resulting in an improvement value of \$1,415,677.<sup>26</sup> The value of the land component of the Subject Property was determined to be \$160,500.<sup>27</sup> Therefore, the assessed value of the Subject Property was \$1,576,200.<sup>28</sup> After protest proceedings, the County Board affirmed the assessment.<sup>29</sup>

The referee who evaluated the Taxpayer's protest to the County Board made the following comments in the referee report:

The house next door at 2125 S 189th Cir sold in 2017 @ \$1,575,000 supporting assessed value of house. The house at 1606 S 187th Cir that sold @ \$1,092,500 is a lesser quality finished house. No change recommended to the 2019 assessed value.<sup>30</sup>

Paul Maass testified that 2125 S 189th Cir. was recently remodeled and was in better condition than the Subject Property as of the 2017 sale. Skradis testified that 1606 S 187th Cir. (the "1606 Property") sold for \$180.37 per square foot in November 2018, but it had different amenities than the Subject Property. According to the printout provided by the Taxpayer, the 1606 Property was 6,068 square feet, built in 1995, rated Very Good quality and Very Good

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<sup>23</sup> Ex. 2:8.

<sup>24</sup> Id. In this context, "add-on value" refers to amenities such as a wood deck and a sprinkler system that are not reflected in the base per square foot replacement cost.

<sup>25</sup> Ex. 2:8-9.

<sup>26</sup> Id.

<sup>27</sup> Ex. 2:3.

<sup>28</sup> Ex. 1.

<sup>29</sup> Id.

<sup>30</sup> Ex. 2:19.

condition, and assessed at \$1,094,500 in 2019.<sup>31</sup> The exhibit also indicates that the 1606 Property sold for \$1,650,000 in 2020.<sup>32</sup>

Skradis testified that quality ratings are assigned based on elements such as fenestration, building components, quality of construction, pitch of roof, and quality of materials. Excellent is the highest quality rating. Quality ratings do not typically change unless a major remodel occurs. Condition ratings are on a scale from “Worn Out” to “Very Good” based on wear and maintenance, and they generally decline as homes get older. A lower rating can indicate deferred maintenance or needed repairs; a remodel can also raise the condition rating of a home.

Maass testified that the Taxpayer purchased the Subject Property in 2010. He asserted that the Subject Property should not have been rated at Excellent quality, but he did not produce evidence of training or experience in appraising real property, or other supporting evidence for this assertion. Neither Maass nor any other witness could confirm that an internal inspection of the Subject Property had been performed.

Maass gave his opinion that the Subject Property should have been assessed at \$1,002,000. Maass calculated this value by multiplying the square footage of the Subject Property (5,264) by the assessed value per square foot of a property next door, the Peel Property. Maass testified that the Peel property was built in 1998, assessed at \$160 per square foot in 2019, and declined in assessed value by 8% from 2018 to 2019. According to Maass, the Peel Property originally increased in assessed value from 2018 to 2019, but the County Board reduced the 2019 value after a protest. Neither party offered the PRF for the Peel property, nor was evidence adduced to show the basis for the County Board’s decision to reduce its assessed value. Therefore, the Commission is unable to determine that an order to provide equalization between the Subject Property and the Peel Property is necessary or appropriate.

There is a presumption that the County Board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>33</sup> That presumption can be rebutted by competent evidence adduced on appeal to the contrary.<sup>34</sup> If

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<sup>31</sup> Ex. 8, testimony of Skradis.

<sup>32</sup> Ex. 8.

<sup>33</sup> *Brenner* at 283, 811.

<sup>34</sup> *Id.*

the presumption is rebutted, the burden remains on the appellant to demonstrate by clear and convincing evidence that the County Board's valuation was unreasonable or arbitrary.<sup>35</sup>

A resident owner who is familiar with his or her property and knows its worth is permitted to testify as to its value without further foundation, and this principle rests upon the owner's familiarity with the property's characteristics, its actual and potential uses, and the owner's experience in dealing with it.<sup>36</sup> However,

[A]lthough this sort of testimony is admissible evidence, it does not automatically lead to the conclusion that such evidence constitutes competent evidence contrary to the presumption. That determination involves considering not only whether the taxpayer presented admissible evidence but specifically whether the substance of the evidence presented by the taxpayer was competent to rebut the presumption that the Board faithfully performed its duties and had sufficient competent evidence to make its determinations.<sup>37</sup>

Maass's opinion of value was determined by multiplying the per-square-foot assessed value of a single neighboring property by the square footage of the Subject Property. This is not a professionally accepted mass appraisal method identified by Neb. Rev. Stat. § 77-112, and no evidence of its professional acceptance as a mass appraisal method has been produced. Therefore, the Commission finds that Maass's opinion of value does not constitute competent evidence to rebut the presumption in favor of the County Board's valuation. The Taxpayer did not produce competent evidence that the Peel Property was comparable to the Subject Property for equalization purposes, nor did the Taxpayer produce competent evidence that the quality rating and methodology used by the County Assessor were incorrect.

## VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that

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<sup>35</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>36</sup> *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 947, 911 N.W.2d 551, 561 (2018) (citing *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008)).

<sup>37</sup> *Green Living Trust* at 948, 561.

the County Board's decision was arbitrary or unreasonable. Therefore, the decision of the County Board should be affirmed.

## VII. ORDER

### IT IS ORDERED:

1. The decision of the Douglas 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 \$1,576,200.
3. This Decision and Order, if no appeal is timely filed, 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 for purposes of appeal on November 23, 2021.<sup>38</sup>

Signed and Sealed: November 23, 2021

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Robert W. Hotz, Commissioner

SEAL

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Steven A. Keetle, Commissioner

<sup>38</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.