

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

Charles D. Palm,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0421

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

Background

1. The Subject Property is an improved residential parcel with a legal description of Grant Place Lot 1 Block 4 41.7 x 124, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$130,300 for tax year 2019.
3. Charles D. Palm (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$130,300 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 July 29, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Charles Palm and Angela Hanes was present at the hearing for the Taxpayer.
8. Kurt Skradis of the Douglas County Assessor/Register of Deeds Office was present for the County Board (the County Appraiser).

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>
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

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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).

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 Subject Property was not equalized with other comparable properties in the neighborhood.
17. The Taxpayer offered photographs of the property next door and the property across the street from the Subject Property. The photographs show properties that are improved with one and one-half story houses while the Subject Property is a ranch style home.
18. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales that occurred in the portion of the valuation area that contains the neighborhood of the Subject Property, which was used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
19. The Taxpayer did not present the Property Record File (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

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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).

features of the properties such as style of construction, quality, condition, age, bathrooms, amount and type of basement finish, garages, decks, porches, etc.<sup>9</sup>

20. The Commission is unable to determine that properties presented are comparable to the Subject Property.
21. The Taxpayer alleged that the assessed value of the Subject Property should be reduced do to the condition of the Subject Property.
22. The Taxpayer presented photographs of the front stoop and walkway as well as the basement bathroom of the Subject Property. The Taxpayer discussed water damage and repairs that the Subject Property needed and repairs and maintenance that had been done near the assessment date.
23. The County Appraiser, after reviewing the photographs and the discussion of the condition of the Subject Property stated that the stoop and walkway were in such a condition that they contributed no value to the Subject Property and should be removed.
24. The Taxpayer did not present any other information that would indicate that the condition determination of average for the Subject Property was arbitrary, unreasonable or incorrect.
25. The Commission finds and determines that the value of the improvements on the Subject Property should be reduced by the amount contributed by the porch and front steps as shown on the PRF and the assessed value of the improvements are therefore \$119,400.<sup>10</sup> Combined with the land value of \$10,300 this would result in a total assessed value of \$129,700 for tax year 2019.
26. 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.
27. 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.

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<sup>9</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on June 23, 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.*

<sup>10</sup> \$723 - \$339 depreciation (\$723 x 46.94%) = \$384. \$384 x 1.0118 NBHD Adjustment = \$389. \$389 x 1.59 Quality Adjustment = \$619. \$120,000 - \$619 = \$119,400 (rounded).

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

|                     |                  |
|---------------------|------------------|
| Land                | \$ 10,300        |
| <u>Improvements</u> | <u>\$119,400</u> |
| Total               | \$129,700        |

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 19, 2021.

Signed and Sealed: March 19, 2021

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Steven A. Keetle, Commissioner