

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

James B. Meyers,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0467

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 2,384 square foot two story residence, with a legal description of: Armbrust Park Lot 14 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$352,500 for tax year 2019.
3. James B. Meyers (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$290,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$352,500 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 August 26, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. James B. Meyers (Taxpayer) was present at the hearing.
8. Scott Barnes of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was 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 Subject Property should be reduced based on equalization with the assessed value set by the County Board for the 2020 assessment year.
17. The Taxpayer presented information regarding the assessed values for the Subject Property and six other properties on the same block as the Subject Property for tax year 2020.
18. The Taxpayer did not present the 2020 Property Record File (PRF) for the Subject Property or any of the six other properties or any other information except for address, assessed values, square footage, arrayed on a spreadsheet, and location on a map. The Commission does not know the age, quality, condition, style (e.g. two story, ranch, etc.), basement size and finish for any of the six other properties presented.
19. The County Board presented the 2019 PRF for the Subject Property as well as 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).

Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.

20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
21. The Commission cannot determine if the properties presented by the Taxpayer are comparable to the Subject Property for equalization purposes for tax year 2019.<sup>10</sup>
22. The Taxpayer further alleged that the sale price of the sold property next door to the Subject Property indicated that the assessed value of the Subject Property should be lower.
23. The Taxpayer did not present the 2019 Property Record File (PRF) for the sold property next door. The Commission does not know the age, quality, condition, style (e.g. two story, ranch, etc.), basement size and finish of the sold property next door.
24. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>11</sup> A prior year's assessment is not relevant to the subsequent year's valuation.<sup>12</sup> For this reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
25. The Taxpayer has not demonstrated that the assessed value of the Subject Property is not equalized with other comparable properties.
26. The County Appraiser stated, based on an inspection, that the condition rating of the Subject Property should be average rather than good for tax year 2019. Based on this reduction in condition rating, the County Appraiser's opinion of value for the Subject Property would be \$322,700 for tax year 2019.
27. The Commission finds that the actual value of the Subject Property is \$322,700 for tax year 2019.
28. 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.
29. 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:

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<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>10</sup> The Commission notes that the square footage listed by the Taxpayer in his presentation for 2020 is different than the square footage for the Subject Property found on the 2019 PRF.

<sup>11</sup> *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>12</sup> *DeVore, Affiliated Foods*, see also *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

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: \$322,700.
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 August 24, 2021.

Signed and Sealed: August 24, 2021

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Steven A. Keetle, Commissioner