

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

Dwayne D. Nielsen,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0564

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 660 square foot raised ranch residence, with a legal description of: Homestead Add Lot 891 Block 0 40 X 133, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$49,700 for tax year 2019.
3. 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 \$49,700 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 Keetle.
7. Dwayne D. and Brian Nielsen (Taxpayer) were present at the hearing for the Taxpayer.
8. Scott Barnes, with 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 value of the land component of the Subject Property is too high due to the size and shape of the lot. The Taxpayer alleged that the narrow (40 foot) width and the limited access to the rear of the lot due to the closing of the alleyway limited its value and didn’t allow for additions to the improvements on the Subject Property.
17. The County Board presented the Property Record File (PRF) for the Subject Property as well as information regarding the qualified sales of other properties that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
18. The County Appraiser stated that the 40-foot width of the lot was common in the area and that land sales of similar properties supported the assessed value of the land component of 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).

19. The Taxpayer alleged that the increase in the assessed value of the improvements located on the Subject Property from the prior assessment is too great as the Taxpayer has not made any large upgrades or repairs to the Subject Property.
20. 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>
21. The Taxpayer alleged that increased crime in the area negatively impacted the value of the Subject Property.
22. The Taxpayer did not provide any crime statistics for the area or other information that would allow the Commission to quantify the impact that crime in the area may have on the value of the Subject Property.
23. The Taxpayer further alleged that the quality and condition of the Subject Property are overstated, resulting in an assessed value that is too high.
24. The County Appraiser stated that the information provided regarding the quality of construction and condition of the Subject Property would be consistent with the quality and condition ratings of the Subject Property as shown on the PRF, properly accounting for the quality and condition of the Subject Property when determining assessed value.
25. The Taxpayer stated that the portion of the Subject Property designated as "Garage: Basement Single" on the PRF did not have a concrete floor but rather had a dirt floor. The Taxpayer stated that the remainder of the basement was a "dugout" that had sloping dirt walls rather than stone, block, or concrete walls.
26. The County Appraiser stated that a dugout basement would add value to a property, but not as much value as a typical basement. Due to the unusual nature of the basement, he was unable to indicate the reduction in assessed value that would account for the dugout-style configuration of the basement area. The County Appraiser stated that due to the dirt floor in the garage area the value included in the assessment for a single basement garage on the PRF should be removed.
27. The Commission finds and determines that the assessed value of the Subject Property should be reduced by the value arbitrarily included for the "Garage Basement Single."
28. The Commission finds and determines that the assessed value of the Subject Property is \$15,400 for the land component and \$33,465<sup>11</sup> for the improvement component for a total assessed value of \$48,865 for tax year 2019.
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.

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<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).

<sup>11</sup> \$1,868.50 garage basement single × 64.69% physical depreciation = \$1,208.73 depreciation. \$1,868.50 – \$1,208.73 = \$659.77 garage basement single depreciated × 0.8424 NBHD Adj = 555.79 × 1.46 quality adj = \$811.45 garage basement single value. \$34,275 Improvement value – \$811.45 = \$33,465 improvement value (rounded).

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	\$15,400
<u>Improvements</u>	<u>\$33,465</u>
Total	\$48,865

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 6, 2021.

Signed and Sealed: August 6, 2021

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Steven A. Keetle, Commissioner