

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

James W. McKay,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 19R 0578 & 20R 0627

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 1,996 square foot ranch style residence and pole barn, with a legal description of: Lands Sec-Twn-Rge 09-16-13 N ½ E 10 AC S ½ SW ¼ NW ¼ 5 AC, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$298,500 for tax year 2019 and \$309,800 for tax year 2020.
3. James W. McKay (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 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$298,500 for tax year 2019 and \$309,800 for tax year 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 July 22, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. James W. McKay was present at the hearing.
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>

<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, 759 N.W.2d 464, 473 (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 amount of the increase in the assessed values of the Subject Property from the 2018 assessed value was too great.
17. 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>
18. The Taxpayer alleged that the assessed valuations did not account for the condition of the improvements on the Subject Property.
19. The Taxpayer discussed the materials used in the construction of the property and the condition of parts of the structure, including the eaves, back door, and stoop. The Taxpayer presented a picture of the stoop.
20. 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

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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> 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).

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.

21. The PRF for the Subject Property shows that the residence on the property is rated as average quality and fair condition, while the outbuilding is rated as fair quality and fair condition.
22. The Taxpayer has not presented information to demonstrate that the quality or condition ratings determined for the Subject Property were arbitrary or unreasonable.
23. The Taxpayer alleged that the location of the Subject Property and the road leading to it reduced the value of the Subject Property.
24. The Taxpayer presented pictures of cars parked along the road leading to the Subject Property and pictures of busses turning into the nature center located down the road from the Subject Property. The Taxpayer stated that parking and traffic were higher on Friday nights and during the summer day camps conducted at the neighboring nature center.
25. The Taxpayer alleged that the road to the north of the Subject Property was barricaded years ago near the northwest corner of the Subject Property, which caused 36<sup>th</sup> street to be inaccessible to the west of the Subject Property and decreased the value of the Subject Property.
26. The Taxpayer further alleged that the road to the north of the Subject property was gravel rather than blacktop or pavement, which, when combined with bad weather and the barricade, caused vehicles to get stuck on the road north of the Subject Property.
27. The Taxpayer did not present information that would allow the Commission to quantify the impact, if any, of the road, traffic, and parking described above on the assessed value of Subject Property.
28. The County Appraisers stated that the entire market area in which the Subject Property was located was reappraised for tax years 2019 and 2020 because assessed values were not keeping up with increasing sales prices of residential properties in the area.
29. The County Appraisers discussed the sales of properties with the same condition rating as the Subject Property in the same market area as the Subject Property, including the property located directly adjacent to the east, which supported the assessed value of the Subject Property.
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.

ORDER

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 is:

Land	\$ 80,000
<u>Improvements</u>	<u>\$218,500</u>
Total	\$298,500

3. The taxable value of the Subject Property for tax years 2020 is:

Land	\$ 80,000
<u>Improvements</u>	<u>\$229,800</u>
Total	\$309,800

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective on June 27, 2022.

Signed and Sealed: June 27, 2022

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Steven A. Keetle, Commissioner