

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

Michael P. Burns,  
Appellant,

Case No: 19R 0587

v.

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

Douglas County Board of Equalization,  
Appellee.

**Background**

1. The Subject Property is a residential parcel improved with a 2,245 square foot ranch style residence, with a legal description of: West Bay Springs Lot 153 Block 0 Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$394,700 for tax year 2019.
3. Michael P. Burns (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 \$394,700 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 July 22, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael P. Burns 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>

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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, 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 assessed value of the Subject Property was not equalized with the assessed value of another comparable property.
17. The Taxpayer presented information from the County Assessor’s website regarding the Subject Property and a purportedly comparable property located on S 184<sup>th</sup> Ave. The information from the County Assessor’s website is for the 2021 assessment year. The Taxpayer did not present the Property Record File for either of these properties.
18. The Taxpayer alleges that the 184<sup>th</sup> Ave property is an upgraded version of the Subject Property but has a lower assessed value.
19. The information presented by the Taxpayer indicates that both properties are ranch style properties with similar square footage of above ground living area with good quality and good condition ratings. The Subject Property has a lake view, while the 184<sup>th</sup> Ave property has lake frontage. The 184<sup>th</sup> Ave property has a larger garage, an additional half bath, and more decks and porches than the Subject Property. The Subject Property is

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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).

newer, has a poured concrete basement (rather than a concrete block basement), and has more finished basement square footage than the 184<sup>th</sup> Ave property.

20. The Taxpayer stated that the tax levy on the two properties was significantly different. This fact, combined with the information on the County Assessor's website, indicates that the Subject Property is located outside of the city limits of the City of Omaha, while the 184<sup>th</sup> Ave property is located inside the city's limits.
21. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
22. "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value."<sup>10</sup>
23. The County Board presented the PRF for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used by the County Assessor to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
24. The County Appraisers stated there was a significant difference in the sales prices between the Subject Property's subdivision and the adjacent subdivision in which the 184<sup>th</sup> Ave property is located.
25. The County Board presented a map of the area, which showed that the Subject Property and the 184<sup>th</sup> Ave property are in adjacent subdivisions, the County Assessor classifies as different neighborhoods.
26. The qualified sales presented by the County Board indicate that the median price per square foot for ranch style properties with good quality and good condition ratings in the Subject Property's neighborhood is \$207.98 per square foot. In contrast, the median price per square foot in the 184<sup>th</sup> Ave property's neighborhood is \$175.80 for properties of the same style and ratings.
27. The Taxpayer did not present the PRF for the 184<sup>th</sup> Ave property. Accordingly, the Commission cannot find the value contributed by the different characteristics of the 184<sup>th</sup> Ave property or the neighborhood adjustments applied to properties located in its neighborhood by the County Assessor. Thus, the Commission is unable to determine the adjustments for the differences in the location and other characteristics to apply to make the 184<sup>th</sup> Ave property comparable to the Subject Property.<sup>11</sup>

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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> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 14, 2021, 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.*

28. The Commission finds that 184<sup>th</sup> Ave property is not comparable to the Subject Property.
29. 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.
30. The Taxpayer has not 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 affirmed.

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

Land	\$ 80,100
<u>Improvements</u>	<u>\$314,600</u>
Total	\$394,700

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 July 8, 2022.

Signed and Sealed: July 8, 2022.

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Steven A. Keetle, Commissioner