

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

Jana Wheatley,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0605

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

Case No: 20R 0648

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 1,634 square foot tri-level residence, with a legal description of: Chapel Hill Lot 103 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$167,700 for tax year 2019 and \$172,500 for tax year 2020.
3. Jana Wheatley (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessed values for tax years 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$167,700 for tax year 2019 and \$172,500 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 20, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Jana Wheatley 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>

---

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

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 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 presented pictures of the interior of the Subject Property from 2016. The Taxpayer stated that she had not been inside the Subject Property since 2016 due to legal issues she is having with the tenant.
17. 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 to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.

---

<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).

<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).

18. The photographs and statements regarding the condition of the Subject Property support the County Assessor's condition rating of "fair" for tax years 2019 and 2020.
19. The Taxpayer presented a copy of an Option to Purchase Real Property, Lease Agreement, Exercises of Option to Extend Lease, Real Property Purchase Agreement, Warranty Deed, and other legal documents pertaining to the sale, lease, and option to purchase the Subject Property.
20. The Taxpayer argues that the value of the Subject Property is limited because she cannot sell the Subject Property due to the terms of the Option to Purchase the Subject Property executed in 2012, which will not expire until sometime in 2024. The only value the Taxpayer may derive from the Subject Property during the lease is the rent derived from the lease.
21. The County Appraisers argued that the assessed value of the Subject Property is not determined by the amount of income derived from the lease of the Subject Property, but rather, its market value.
22. Under Nebraska law, real property "means all land, buildings,...improvements,...and all privileges pertaining to real property."<sup>9</sup> Privileges pertaining to real property is defined as "the right to sell, lease, use, give away, or enter, and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder."<sup>10</sup>
23. Nebraska law also provides that all real property not exempt from taxation is to be valued at its actual value.
24. According to the Nebraska Supreme Court, "[T]he actual value of real property for tax purposes shall be the value which a willing buyer would be willing to pay for the fee simple interest."<sup>11</sup> The term "fee simple" refers to "the entire property, including the entire bundle of rights associated with ... ownership."<sup>12</sup>
25. Actual or fair market value of real property can be ascertained by first determining the value of the fee simple value including the leasehold estate, the leased fee estate, and any other severed estate. .<sup>13</sup>
26. The information presented to the Commission in these appeals indicated that there are at least three different interests in the Subject Property that contribute to the fee simple value: the leased fee estate held by the Taxpayer, the leasehold interest held by the tenant under the lease agreement, and the option to purchase held under the option to purchase real property.
27. The Taxpayer has not shown that the assessed value as determined by the County Board is not the actual value of the fee simple interest in the Subject Property.

---

<sup>9</sup> Title 350 Neb. Admin. Code. Ch 10 §002.18 (10/14). See also, *Omaha Country Club v. Douglas Cty. Bd. of Equal*, 11 Neb. App. 171, 645 N.W.3d 821 (2002)

<sup>10</sup> Title 350 Neb. Admin. Code. Ch 10 §002.18G (10/14). See also, *Omaha Country Club v. Douglas Cty. Bd. of Equal*, 11 Neb. App. 171, 645 N.W.3d 821 (2002)

<sup>11</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal*, 11 Neb. App. 171, 645 N.W.3d 821 (2002).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

28. The Taxpayer presented a letter from the County Board that indicated some properties that protested their 2020 assessed value to the County Board had their 2020 values set at their 2019 value without review.
29. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>14</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>15</sup>
30. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”<sup>16</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>17</sup>
31. “By adjudicating tax protests in greatly disparate amounts...the Board failed to fulfill its ‘plain duty’ to equalize property valuations.”<sup>18</sup>
32. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>19</sup>
33. For tax year 2020 the equalized value of the Subject Property is the same as the 2019 value of \$167,700.
34. For tax year 2019 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.
35. For tax year 2019 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.
36. For tax year 2020 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.
37. For tax year 2020 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

---

<sup>14</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>15</sup> *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

<sup>16</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>17</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>18</sup> *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

<sup>19</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

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 Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is vacated and reversed.
3. The taxable value of the Subject Property for tax years 2019 and 2020 is:

Land	\$ 49,100
<u>Improvements</u>	<u>\$118,600</u>
Total	\$167,700

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 17, 2022.

Signed and Sealed: June 17, 2022

---

Steven A. Keetle, Commissioner