

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

Thomas R. Russell,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 20R 0338 & 21R 1147

**DECISION AND ORDER  
AFFIRMING THE DECISIONS OF THE  
DOUGLAS COUNTY BOARD OF  
EQUALIZATION**

Background

1. The Subject Property consists of an improved residential parcel with a legal description of Mission Park 2nd Add Lot 188 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$323,500 for tax year 2020 and \$323,500 for tax year 2010.
3. Thomas R. Russell (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$323,500 for tax year 2020 and 2021.
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 March 14, 2022, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Thomas Russell was present at the hearing for the Taxpayer.
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>
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

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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).

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 there were features of the Subject Property that negatively impacted its market value.
17. The Taxpayer presented pictures and discussed the driveway, which has a 12% slope from the street as well as the fire hydrant located next to the driveway and the finish of some of the interior rooms and basement.
18. The County Board presented the 2020 and 2021 Property Record File (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.
19. The Taxpayer has not provided information to quantify the impact that the driveway slope or fire hydrant location would have on the market value of the Subject Property in order for the Commission to determine if relief should be granted for these factors.

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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).

20. When reviewing all of the information presented regarding the Subject Property, the Taxpayer has not presented information to demonstrate that the quality rating of good for the Subject Property was arbitrary or unreasonable.
21. The Taxpayer alleged that the condition of the Subject Property was negatively impacting the market value of the Subject Property.
22. The Taxpayer presented annotated photographs of the interior and exterior of the Subject Property and discussed condition issues regarding the Subject Property. The Taxpayer stated that the condition of the property shown in the photographs was representative of the Subject Property in both tax years.
23. The Taxpayer presented a 2013 insurance claim for hail damage to the Subject Property which he stated has not been repaired. The Taxpayer also presented separate estimates for replacing both of the garage doors, replacing all of the original carpeting, leveling and sealing the concrete driveway and rear patio, repainting the interior of the Subject Property, and replacing the backyard privacy fence.
24. The County Assessors stated that the photographs presented by the Taxpayer as well as the estimates provided were consistent with the condition rating of fair as applied to the Subject Property but that the basement finish depicted in the photographs would be full finish rather than fair finish as shown on the PRF.
25. The County Board did not present information to quantify the increase in value that a change of the basement finish from fair to full finish would have on the assessed value of the Subject Property.
26. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
27. 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.
28. 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 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 and 2021 is:

Land	\$ 54,200
<u>Improvements</u>	<u>\$269,300</u>
Total	\$323,500

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 years 2020 and 2021.
7. This Decision and Order is effective on June 22, 2022.

Signed and Sealed: June 22, 2022

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Steven A. Keetle, Commissioner