

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

Kevin T. Weidner,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 20R 0364

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

Background

1. The Subject Property is an improved rural residential parcel with a legal description of Lands Sec-Twn-Rge 25-15-10 -Ex S 232.94 N 465.94 E 187 W 350 Ft & Irreg S 586.86 N 814.5 W 77.96 Ft & S 350 Ft- Irreg W 370 Ft NW1/4 NW1/4, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$260,200 for tax year 2020.
3. Kevin T. Weidner (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$260,200 for tax year 2020.
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 March 14, 2022, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kevin Weidner 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>

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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 Subject Property should not have been removed from Special Valuation status as it had been granted Special Valuation in 2019.
17. The Taxpayer and County Board agree that the Subject Property, the “homestead” property located within the Subject Property and the two properties to the east were annexed into the City of Omaha in 2019.
18. In order to qualify for Special Valuation “[t]he land must be located outside the corporate boundaries of any sanitary and improvement district, city, or village except...” “land subject to a conservation or preservation easement[.]”<sup>9</sup>
19. The Taxpayer stated that the portion of the Subject Property that did not contain the utility building or driveway was utilized for haying bromegrass but did not allege that it was subject to a conservation or preservation easement.
20. The Taxpayer has failed to demonstrate that the Subject Property was eligible for Special Valuation for tax year 2020.

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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> Neb. Rev. Stat §77-1344(1) & (2) (2020 Cum. Supp.).

21. The County Board presented the 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.
22. The County Appraisers stated that rural residential land in the area of the Subject Property was in demand and that a recent sale a few blocks from the Subject Property sold for over three times assessed value of the Subject Property, which would support the County Board's determination of value for the Subject Property.
23. The Taxpayer alleged that the value of the Subject Property would be impacted by its topography including a MUD setback on the Pacific Street side, the location of the outbuilding and septic system for the adjoining homestead, and the unusual shape of the Subject Property.
24. The Taxpayer did not indicate how to quantify the value of the Subject Property to account for the described features.
25. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the neighboring property to the west.
26. The Taxpayer provided the tax information and map of the property to the west but did not provide the PRF.
27. The Taxpayer did not know if the property to the west was annexed into the City of Omaha or otherwise disqualified for Special Valuation.
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
29. Without the PRF for the comparable properties, the Commission is unable to determine if the property to the west is comparable to the Subject Property.<sup>11</sup>
30. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with other comparable properties.
31. 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.
32. 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

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<sup>10</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on February 18, 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.*

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$227,500
<u>Improvements</u>	<u>\$ 32,700</u>
Total	\$260,200

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 2020.
7. This Decision and Order is effective on June 17, 2022.

Signed and Sealed: June 17, 2022

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Steven A. Keetle, Commissioner