

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

PAUL B. BARTELS,  
APPELLANT,

CASE NOS: 20R 0594 &  
21R 0783

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

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

**I. BACKGROUND**

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 2140000261.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$355,200 for tax year 2020 and tax year 2021.
3. Paul B. Bartels (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 \$355,200 for tax year 2020 and tax year 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 December 5, 2022, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Paul B. Bartels was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (the County Appraisers) were present for the County Board.

## II. 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 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>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<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).

<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.* at 283-84.

<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, 174-75, 645 N.W.2d 821, 826 (2002).

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>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 1,914 square foot split level townhouse constructed in 2005. The Subject Property has a quality rating of very good and a condition rating of good.
17. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
18. 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. 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 PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2020.
20. The Taxpayer presented a spreadsheet for each of the tax years that contained information about other properties the Taxpayer alleged were comparable to the Subject Property.
21. The Taxpayer's 2020 spreadsheet contained 20 properties and the 2021 spreadsheet contained 17 properties.
22. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics

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<sup>7</sup> *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

- (size, shape, and topography), and location.<sup>9</sup>
23. “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>
  24. The County Appraisers stated that they separated the downtown Omaha area into several different market areas because of differences in market influences that impacted values in the different areas.
  25. For tax year 2020 the County Board presented a listing of sales for the Subject Property’s market area as well as other different market areas showing differences in sales prices both in total and on a per square foot basis. For tax year 2021 the County Board presented a listing of sales for the Subject Property’s market showing sales prices both in total and on a per square foot basis.
  26. The County Appraisers stated that the Taxpayer’s spreadsheet does not contain properties located in the same market area as the Subject Property and that therefore none of the properties should be considered comparable to the Subject Property.
  27. The Taxpayer presented the 2020 and 2021 PRF for four properties that appear on both of the Taxpayer’s spreadsheets.
  28. A review of the PRF’s for the Subject Property and the four properties presented by the Taxpayer show that there are differences in the characteristics of the properties.
  29. The Subject Property has the highest quality rating of all of the properties for which the Commission has PRF’s. Additionally, there are significant differences in style, quality, condition, and age that impact the base square footage values used in the assessment calculations, as well as the amount of depreciation

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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).

applied, in addition to differences in value due to amenities such as balconies, decks, home theaters, garages, etc.

30. There are also differences in the location of the properties presented. The Subject Property is in a rowhouse regime between the southern edge of the old market and the railroad tracks, two of the properties are located south of the railroad tracks in the Little Italy area, one is located north of the old market and Dodge Street in the Capitol district, and the fourth is an 11<sup>th</sup> floor condominium in a remodeled downtown department store.
31. The PRF's show that the Subject Property was not revalued for tax year 2021. One of the other properties presented by the Taxpayer was not revalued for tax year 2021, while the three other properties presented by the Taxpayer were revalued for tax year 2021.
32. The County Appraiser stated that, for each tax year, if assessed values were too low, or high, as compared to sales prices in the market area then an entire market area would be revalued to reflect sales prices and market forces in the area.
33. The County Appraisers discussed how the differences in market forces and sales prices were part of the reason that three of the properties were reassessed while the other two were not. The County Appraisers also discussed the adjustments made to the different areas as shown on the PRF's.
34. The Taxpayer did not present the PRFs for the remaining properties on the Taxpayer spreadsheets. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties discussed by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties

- discussed by the Taxpayer, such as style, age, quality, condition, parking, decks, etc., to the Subject Property.<sup>11</sup>
35. The Commission cannot find that the properties presented by the Taxpayer were comparable to the Subject Property.
  36. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with those of other comparable properties.
  37. The Taxpayer alleged that the value of the Subject Property should be reduced due to nuisances and negative conditions that impair the value of the property.
  38. As noted earlier in this order the Subject Property is in a rowhouse regime located between the southern edge of the old market and the railroad tracks.
  39. The Taxpayer did not present information to quantify the impact of these locational factors on the value of the Subject Property.
  40. The County Appraisers stated that the sales of properties in the market area were also subject to the same locational factors.
  41. The PRF of the Subject Property shows that it has the largest negative neighborhood adjustment of any of the properties whose PRF was presented in these appeals.
  42. The Taxpayer has not demonstrated that the assessed value of the Subject Property did not account for locational nuisances and negative conditions.
  43. The Taxpayer further alleged that the value of the Subject Property should be reduced based on the condition of the roof and windows as well as hail damage to the exterior of the Subject Property.

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<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 5, 2022, 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.*

44. The Taxpayer did not present photographs of the roof, windows, or hail damage or any estimates for repair of these items.
45. The County Appraisers stated that the condition of the roof, windows, and exterior of a property were factors that go into the determination of the overall condition rating of a property, along with the condition of the interior and other parts of the property.
46. The Taxpayer has not demonstrated that the County Assessors determination of a condition rating of good for the Subject Property was unreasonable or arbitrary.
47. 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.
48. 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.

#### **IV. 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	\$ 22,100
<u>Improvements</u>	<u>\$333,100</u>
Total	\$355,200

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 years 2020 and 2021.
7. This Decision and Order is effective on December 6, 2023.

Signed and Sealed: December 6, 2023



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Steven A. Keetle, Commissioner