

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

BRYAN R. MCCARTNEY,  
APPELLANT,

CASE NOS: 21R 0182,  
22R 0209

V.

HALL COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
AFFIRMING THE DECISIONS  
OF THE HALL COUNTY  
BOARD OF EQUALIZATION

**For the Appellant:**

Bryan R. McCartney,  
Pro Se

**For the Appellee:**

Sarah L. Carstensen,  
Woods Aitken Law Firm

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle. Commissioner Hotz presided.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in the city of Grand Island, Hall County, Nebraska. The legal description and Property Record Files (PRF) of the Subject Property are found at Exhibits 123 and 150.

**II. PROCEDURAL HISTORY**

The Hall County Assessor determined the assessed value of the Subject Property was \$250,782 for tax year 2021. Bryan McCartney (the Taxpayer) protested this assessment to the Hall County Board of Equalization (the County Board) and requested a taxable value of

\$164,556. The County Board determined the taxable value of the Subject Property for tax year 2021 was \$250,782.<sup>1</sup>

For tax year 2022, the County Assessor determined the assessed value of the Subject Property was \$250,782. McCartney protested this assessment to the County Board and requested a taxable value of \$164,556. The County Board determined the taxable value of the Subject Property for tax year 2022 was \$264,844.<sup>2</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Single Commissioner Hearings were held on October 20, 2022, and March 31, 2023, respectively. A Decision and Order was issued for each Single Commissioner proceeding on June 2, 2023, and June 6, 2023. The Taxpayer timely requested rehearings relating to each appeal.

The Commission held a consolidated hearing for both appeals on November 1, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-191 were admitted into evidence.

### **III. STANDARD OF REVIEW**

The Commission's review of the County Board's determination is de novo.<sup>3</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

assessment and has acted upon sufficient competent evidence to justify its action.<sup>4</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>5</sup>

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>8</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>9</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears

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<sup>4</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 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 County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>9</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

an appeal or cross appeal.<sup>10</sup> The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### **IV. RELEVANT LAW**

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>14</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>16</sup> All real property in

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<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.<sup>19</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>20</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>21</sup> 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>22</sup> 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>23</sup> 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 the 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>24</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

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<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> Neb. Const., art. VIII, § 1.

<sup>20</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

<sup>22</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>23</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>24</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

## V. FINDINGS OF FACT

At the hearing for these appeals, McCartney made two primary assertions. First, that the square footage of the Subject Property was incorrect because it included a room that should not have been considered as living area and second, that the Subject Property was not equalized with other properties.

McCartney provided an appraisal report, dated November 7, 2016, for the purpose of demonstrating that the square footage of the residence was only 1,574 square feet,<sup>26</sup> rather than the 1,779 square feet as shown in the property record files of the County Assessor.<sup>27</sup> The additional 205 square feet consisted of a “bonus room” between the garage and the house which was used as an exercise room with extra storage space.<sup>28</sup> The County Assessor counted the bonus room as additional living area beginning in tax year 2021.

Jennifer McCartney testified the bonus room was a breezeway between the garage and the house. She stated a permanent wall had been added to make the separation between the garage and the house. She stated the room had similar finish as compared to the rest of the house, including painted walls, hung cabinetry, crown molding, trim, carpet, electricity, coaxial cable, and a ceiling fan.<sup>29</sup> She said the room had no duct work for heating or cooling. The Taxpayer argued the bonus room should not be characterized and assessed as living area space. The County Assessor considered the room as one story finished living area on concrete slab.

McCartney provided assessment information for over 100 residential parcels in the city of Grand Island.<sup>30</sup> With each parcel, McCartney compared the assessed value of the parcel with the assessed value of the Subject Property. No sales were analyzed, nor were any assessed-to-sale ratios evaluated. McCartney also did not make any adjustments for quality or condition of improvements in the

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<sup>26</sup> Exhibit 4.

<sup>27</sup> Exhibit 11. The County Assessor was Kristi Wold.

<sup>28</sup> Exhibit 8 includes several photographs of the “bonus room.”

<sup>29</sup> See the photographs at Exhibit 8:1 to 8:4.

<sup>30</sup> Exhibits 6, 12-120.

analysis or any other adjustments for differences between the over 100 properties presented and the Subject Property.

The County Assessor testified the Subject Property was compared to other properties in the City of Grand Island in the same market area, identified as Neighborhood 6; one-story ranch houses.

## **VI. ANALYSIS**

According to the exhibits and testimony, the bonus room had all the features of the living area of the house with two exceptions; it was located on concrete slab, and it did not have duct work for heating and cooling. Based on these facts we cannot find that the bonus room should be valued as garage space, and there is not clear and convincing evidence that it should not have been assessed as living area, as it was intentionally partitioned from the garage, finished, and was being used for purposes that separated it from the functions of the garage.

Regarding McCartney's assertion that the assessment of the Subject Property was not equalized with assessments of comparable properties, we must first understand the market areas of the city of Grand Island as identified by the County Assessor. According to the County Assessor, the City of Grand Island was divided into six market areas: each designated as "Grand Island Neighborhood," and numbered 1 to 6.

The Subject Property was located in Neighborhood 6, consisting of multiple non-contiguous areas throughout the city. The County Assessor testified that sales of other properties within Neighborhood 6 were analyzed to determine the assessed value of the Subject Property.

McCartney disregarded the market area designations of the County Assessor and asserted the properties on the South side of the city should not have been used as comparables to the Subject Property. Instead, McCartney focused on properties closer in proximity to the Subject Property but did so without regard to sales prices or adjustments for differences. In particular, McCartney asserted three properties should have been used as comparables: 1427 Piper, 1417 Piper, and 3108 Kennedy Circle. However, none of these three

properties had sold, and McCartney did not otherwise account for the differences between them and the Subject Property. Without making appropriate adjustments, we find there is little usefulness in the comparisons of the assessments. Based on the evidence received, we cannot conclude that the assessment of the Subject Property was not equalized with comparable properties.

## VII. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be affirmed.

## VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Hall County Board of Equalization determining the value of the Subject Property for tax years 2021 and 2022 are affirmed.

2. The taxable value of the Subject Property for tax year 2021 is

<b>Land</b>	<b>\$ 16,412</b>
<b><u>Improvements</u></b>	<b><u>\$234,370</u></b>
<b>Total</b>	<b>\$250,782</b>

3. The taxable value of the Subject Property for tax year 2022 is

<b>Land</b>	<b>\$ 16,412</b>
<b><u>Improvements</u></b>	<b><u>\$248,432</u></b>
<b>Total</b>	<b>\$264,844</b>

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Hall County Treasurer and the Hall 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 2021 and 2022.
8. This Decision and Order is effective for purposes of appeal on July 17, 2025.<sup>31</sup>

Signed and Sealed: July 17, 2025

SEAL



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Robert W. Hotz, Commissioner

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Steven A. Keetle, Commissioner

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<sup>31</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.