

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

Jordan S. Mawson,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14R 342

Decision and Order Reversing the  
County Board of Equalization

**Background**

1. The Subject Property is a 3,411 square foot 1 ½ story residential property, with a legal description of: Elk Valley Lot 72, Block O Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$326,700 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$272,600 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$326,700 for tax year 2014.
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 November 23, 2016, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Jordan S. Mawson was present at the hearing (Taxpayer).
8. Larry Thompsen of the Douglas County Assessor/Register of Deeds Office was 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 the 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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *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 the square footage of the Subject Property was incorrect in the County’s Property Record File.
17. Based on the measurements in the County’s Property Record File, measurements taken by an appraiser in 2008, measurements taken by another appraiser in 2016, and the discussion between the Taxpayer and County regarding the square footage of the Subject Property, the Commission determines that the building square footage is 3,210, the basement square footage is 2,142, and the built in garage square footage is 690 square feet.
18. Utilizing these measurements in the valuation formula listed on the Cost Detail contained in the County’s Property Record File would result in an improvement value of \$281,000.<sup>9</sup>
19. The Taxpayer requested an assessed value in the amount of \$272,600 based on an average of assessed values of alleged comparable properties that can best be described as an attempted sales comparison approach.
20. An opinion of value under the sales comparison approach is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject

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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) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<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. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>9</sup> \$339,177 (Replacement Cost New) + \$551 (add ons) - \$20,385 (6.01% depreciation) = \$319,343 x .88 (Neighborhood Adjustment) = \$281,000 (Rounded)

property,<sup>10</sup> and use of a systematic procedure.<sup>11</sup> This approach also requires that analyzed properties must be comparable to the subject property, and receive adjustments for any differences.<sup>12</sup>

21. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.<sup>13</sup> If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.<sup>14</sup>
22. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>15</sup> The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>16</sup>
23. The Taxpayer's requested value was determined by averaging the assessed values of other properties, and then applying the averaged per square foot value to the area of the Subject Property's land component. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.<sup>17</sup> Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
24. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.<sup>18</sup> Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."<sup>19</sup>
25. An examination of the properties submitted for consideration by the Taxpayer is limited because PRFs were not presented to the Commission. Additionally, the Taxpayer's requested value relies upon an examination of averaged assessed values. The Taxpayer's approach for determining the actual value of the Subject Property's value does not meet the requirements of the sales comparison approach.<sup>20</sup>

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<sup>10</sup> The Appraisal of Real Estate, Appraisal Institute, at 297 (13th ed. 2008).

<sup>11</sup> Id. at 301-302.

<sup>12</sup> Id.

<sup>13</sup> See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>14</sup> See, Appraisal Institute, The Appraisal of Real Estate, at 297 (13th ed. 2008) (requiring adjustments for comparable sales to account for differences with the Subject Property).

<sup>15</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>16</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>17</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>18</sup> See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

<sup>19</sup> The Appraisal of Real Estate, Appraisal Institute, at 308 (13th ed. 2008).

<sup>20</sup> See, The Appraisal of Real Estate, Appraisal Institute, at 301-302 (13th ed. 2008)

26. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's requested \$272,600 value because it is not based on a professionally accepted appraisal approach.
27. 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.
28. 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

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 32,000
<u>Improvements</u>	<u>\$281,000</u>
Total	\$313,000

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 (2014 Cum. Supp.).
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 2014.
7. This Decision and Order is effective on February 9, 2017.

Signed and Sealed: February 9, 2017

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Steven A. Keetle, Commissioner