

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

Debbie Markise,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 16R 0393 & 17R 0270

Decision and Order Reversing the  
Determination of the Douglas  
County Board of Equalization

**Background**

1. The Subject Property is a 2,485 square foot residential property, with a legal description of: Stone Creek, Lot 104 Block 0, 73x140, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$266,400 for tax year 2016.
3. Debbie Markise (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$204,609 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$266,400 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$262,700 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$232,280 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$262,700 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on September 24, 2018, at the Omaha State Office Building, 1313 Farnam, Room F, Omaha, Nebraska, before Commissioner Steven Keetle.
10. The Taxpayer was present at the hearing.
11. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

**Applicable Law**

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>

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

13. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
14. 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>
15. 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>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
17. 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>
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

19. The Taxpayer stated that when the improvements on the Subject Property were being constructed, the surveying of the lot was not correctly done, resulting in the elevation of the foundation being lower than required for proper drainage away from the structure. As a result, a portion of the basement walls collapsed and had to be rebuilt during construction.
20. As a result of the improper elevation and improper drainage, the Taxpayer alleged that the Subject Property required remediation work including surveying and engineering work, grading, construction of a swale and drainage, and basement waterproofing.

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<sup>2</sup> 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).

<sup>3</sup> *Brenner* at 283, 811.

<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. Cty. 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).

21. The Taxpayer alleged that the Subject Property is over-assessed for tax years 2016 and 2017 because of the work that needed to be done to the Subject Property.
22. The Taxpayer produced estimates for work to be done to the Subject Property including \$5,600 for a grading package, \$19,741 for waterproofing and \$4,000 for surveying and engineering services, totaling \$29,341. Additionally, \$1,500 would need to be spent on the sprinkler system to return it to working order after the other work was complete, bringing the total to \$30,841.
23. The Taxpayer alleged that the amount of the estimates for work to be done to address the drainage issues should be removed from the assessed value for the Subject Property for tax years 2016 and 2017.
24. The County Board presented the Property Record File (PRF) for the Subject Property for tax years 2016 and 2017. These PRFs indicate that the County Assessor calculated the value of the Subject property using different contributory values for features of the Subject Property for each of the two tax years.
25. For tax year 2016 the PRF indicated that the County Assessor applied a 14% depreciation adjustment for Functional Obsolescence to the Subject Property, resulting in a reduction in assessed value of \$41,670. The PRF goes on to indicate in its narrative summary that “[f]unctional depreciation is measured by any cost to cure item relating to the property such as a new roof.”
26. Professional appraisal standards define functional obsolescence as “loss in value due to inability of the improvement to perform adequately the function for which it is used, as of the appraisal date.”<sup>9</sup>
27. For tax year 2017 the County Assessor did a revaluation of the land and improvement components of the Subject Property. The 2017 PRF contains account notes indicating that someone from the County Assessor’s office met with the Taxpayer and reviewed the estimates for foundation repair and drainage corrections. The County Assessor’s office reduced the condition rating to fair and made an 11% adjustment to the improvements as a cost to cure. Because of the revaluation of the Subject Property for 2017, the Commission is not able to determine what impact the reduction of the condition rating from good to fair would make on the assessed value. The PRF shows that the 11% cost to cure reduction reduced the assessed value of the Subject Property by \$37,815 for tax year 2017.
28. The information presented to the Commission does not support the Taxpayer’s allegation that the assessed values for the Subject Property did not account for the work that needed to be done to the Subject Property to correct the drainage issues.
29. The Taxpayer did state at the hearing that the wood deck or stairs on the back of the Subject Property were removed as part of the work done to the Subject Property and that it was not there as of the assessment dates for tax year 2016 and 2017.

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<sup>9</sup> International Association of Assessing Officers, *Property Assessment Valuation*, at 282 (3rd. ed. 2010).

30. The removal of the wooden deck would reduce the value of the improvements on the Subject Property by \$2,303 for tax year 2016 and \$2,634 for tax year 2017.
31. Based on the information presented at the hearing the Commission finds that the assessed value of the Subject Property for tax year 2016 should be \$35,000 for land and \$229,097 for improvements for a total valuation of \$264,097.
32. Based on the information presented at the hearing the Commission finds that the assessed value of the Subject Property for tax year 2017 should be \$47,200 for land and \$212,866 for improvements for a total valuation of \$260,066.
33. 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.
34. 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 and 2017 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 35,000
<u>Improvements</u>	<u>\$229,097</u>
Total	\$264,097

3. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 47,200
<u>Improvements</u>	<u>\$212,866</u>
Total	\$260,066

4. 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).
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 year 2016 and 2017.
8. This Decision and Order is effective on May 22, 2019.

Signed and Sealed: May 22, 2019

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Steven A. Keetle, Commissioner