

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

John A. Maslonka,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 16R 0432

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

Background

1. The Subject Property is a 2,986 square foot two-story residential property, with a legal description of: Skyline Ranches III Lot 337 Block 0, Irreg, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$447,300 for tax year 2016.
3. John A. Faslonka (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$418,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$447,300 for tax year 2016.
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 August 23, 2018, at the Omaha State Office Bulidng, 1313 Farnam, Rm E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
8. 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

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

<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).

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 assessed value of the Subject Property was not equalized with other similar properties.
17. The Taxpayer presented information regarding five properties near the Subject Property but did not provide the Property Record Files (PRF) for any of these parcels.
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
19. “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>
20. The information provided indicates that all of the properties presented by the Taxpayer have two-story residences of similar size. However, the properties presented by the Taxpayer also have significant differences that prevent them from being comparable to the Subject Property. The lack of the PRF or other quantification of value for these

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<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).

<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).

differences to review does not allow the Commission to determine the adjustment necessary to discern the impact of these differences.

21. Only one of the other properties presented has the same quality and condition rating as the Subject Property, but it lacks the in ground swimming pool and large detached garage that the Subject Property has, which prevent it from being comparable to the Subject Property without adjustments.
22. Two of the other properties have in ground swimming pools, but both of these properties have a lower quality rating than the Subject Property; one also has a lower condition rating, which prevents it from being comparable to the Subject Property without adjustments.
23. Only one of the other properties has an outbuilding; however, its design, location, quality and condition are significantly different than the large detached garage located on the Subject Property, which prevents it from being comparable to the Subject Property without adjustments.
24. The Taxpayer alleged that because the property with the same quality and condition rating as the Subject Property sold for significantly more than its assessed value, the assessed value of the Subject Property should be lowered.
25. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the Subject Property and comparable property.<sup>11</sup>
26. The Commission has evidence of a ratio of assessed to actual value for the sold property but does not have that ratio for the Subject Property to allow it to analyze the Taxpayer's allegation.
27. 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.
28. 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

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 25,700
<u>Improvements</u>	<u>\$421,600</u>
Total	\$447,300

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<sup>11</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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 2016.
7. This Decision and Order is effective on March 5, 2019.

Signed and Sealed: March 5, 2019

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Steven A. Keetle, Commissioner