

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

Keith Baker,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17R 0109 & 18R 0074

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

Background

1. The Subject Property is a residential parcel improved with a 1,646 square foot ranch style residence, with a legal description of: Florence Heights Lot 11 Block 0 S 91.58 N 561.25 Ft Lot 11.25 Ft Vac 31 St Adj, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$208,700 for tax year 2017.
3. Keith Baker (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$147,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$208,700 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$208,700 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$147,500 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$208,700 for tax year 2018.
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 March 14, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle
10. Keith Baker 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> See, 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 he was not appealing the county’s assessment of the land component of the Subject Property, only the assessment of the improvements.
20. The Taxpayer alleged that the value of the improvements on the Subject Property should be reduced to \$107,700 because the value of the improvements had been reduced by appeal or protest in prior assessment years.

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<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 (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 assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
22. Additionally, when making a decision, the commissioner may consider and utilize all matters presented at the proceeding in making his or her determination, but with the exception of specific generally applicable materials, the material must be presented in the single commissioner hearing in order to be considered.<sup>11</sup>
23. The County Board presented the Property Record File (PRF) for the Subject Property for tax years 2017 and 2018 demonstrating the factors used in the cost approach to valuing the Subject Property for each assessment year. The County Board also presented a table regarding all of the qualified sales that occurred in the economic area of the Subject Property used in each tax year determining the value attributed to each of the characteristics of residential properties in those areas, including the Subject Property.
24. The Taxpayer alleges that the Subject Property is comparable to the property directly across the street and should be assessed at the same or a similar amount. The Taxpayer provided the address, above ground square footage, land value, improvement value, total assessed value, key number, and assessed value per square foot of the property directly across the street. The Taxpayer stated that he obtained the information, or the basis for the information in the case of the value per square foot, from the County Assessor's web site.
25. The Taxpayer offered pictures of the Subject Property and the property directly across the street but did not offer the PRF for the property directly across the street.<sup>12</sup>
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>13</sup>
27. "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>14</sup>
28. The Subject Property and the property directly across the street are both ranch style houses of approximately the same amount of above ground square footage.
29. The property directly across the street has a double garage and is brick, but the Commission is not able to determine if it is brick veneer or brick/masonry construction.

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<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

<sup>11</sup> See, Neb. Rev. Stat. § 77-5015.02 and § 77-5016 (Reissue 2018).

<sup>12</sup> The Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 7, 2019, 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.*

<sup>13</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>14</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

30. The Subject Property has a single car garage and wood siding. The PRF also indicates that the Subject Property has an additional single car garage located in the basement. The Subject Property has a walk out basement, outside entrance to the basement, 648 square feet of basement finish and a wood deck.
31. The property directly across the street does not have a walkout basement, without which it could not have a basement garage or an outside entrance, and the Taxpayer was not aware if the property directly across the street had finished basement square footage or not.
32. The Commission cannot determine from the information provided at the hearing if the property directly across the street is comparable to the Subject Property or whether adjustments could make it comparable to the Subject Property.
33. The Taxpayer alleged that the value of the Subject Property was not equalized with other comparable properties and was not assessed at a similar ratio of assessed value to market value.
34. The Taxpayer provided a table listing information about thirty properties located near the Subject Property which included addresses, above ground square footage, land value, improvement value, total assessed value, key number, and assessed value per square foot. The Taxpayer stated that he obtained the information, or the basis for the information, from the County Assessor's web site.
35. The Taxpayer did not present the PRF for any of the properties on the table to allow the Commission to determine the basis for their current valuations. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of these other properties to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>15</sup>
36. The Taxpayer alleged that different assessment models were applied to different neighborhoods which were resulting in valuations that were not uniform and proportionate.
37. The Taxpayer did not offer any PRF or other indication of the assessment model being applied to any property other than the Subject Property. Without any evidence of the assessment model being applied to any property other than the Subject Property the Commission is unable to analyze the Taxpayer's claim regarding assessment modeling.
38. 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.

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<sup>15</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 7, 2019, 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.*

39. 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.

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 2017 and 2018, are affirmed.
2. The taxable value of the Subject Property for tax years 2017 and 2018 is:

Land	\$ 39,800
<u>Improvements</u>	<u>\$168,900</u>
Total	\$208,700

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 2017 and 2018.
7. This Decision and Order is effective on March 27, 2020.

Signed and Sealed: March 27, 2020

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Steven A. Keetle, Commissioner