

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

Dennis K. Thaemert,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0220

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

### **Background**

1. The Subject Property is a residential parcel improved with a 2,170 square foot two story duplex, with a legal description of: Pierces Sub Div Lot 2 Block 1 S ½ LTS 1 & 57.5 X 100, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$188,300 for tax year 2017.
3. Dennis K. Thaemert (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$173,900 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$188,300 for tax year 2017.
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 March 15, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Dennis K. Thaemert 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>

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

<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).

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 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 did not dispute the assessed value of the improvements on the subject Property but only disputed the assessed value of the land component.
17. The Taxpayer alleged that the increase in value of the land component from the prior tax year was unreasonable.
18. 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>
19. The Taxpayer alleged that the land component of the Subject Property was not assessed uniformly and proportionally with other comparable properties.
20. The Taxpayer presented information about the land valuation of undeveloped lots located off of 190<sup>th</sup> and Dodge Street, over ten miles west of the Subject Property.
21. Comparable properties share similar use (residential, commercial/industrial, or

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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, *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).

agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>

22. The properties located off of 190<sup>th</sup> and Dodge Streets do not have the same physical characteristics or similar location as the Subject Property and are therefore not comparable properties.
23. The Taxpayer presented information about six properties located on the same block and across the street from the Subject Property.
24. The Taxpayer alleges that the per square foot values for the lots presented are not uniform and proportional because the smaller the lots the higher the per square foot value.
25. “Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”<sup>12</sup>
26. The values of the lots presented demonstrate the above principle of property assessment in action with regard to per square foot values: as the size of the lots increases, the per square foot value of the lots decreases.
27. When reviewing the per lot values, however, the values of the lots increase the larger the size of the lot except in one instance, the Subject Property.
28. The information presented to the Commission demonstrates that the value of the Subject Property should be no higher than the properties located across the street from the Subject Property which are assessed at \$19,400. There is not, however, sufficient information to allow the Commission to determine how much below the value of the properties across the street the lot value of the Subject Property should be.
29. The Commission finds and determines that the assessed value of the land component of the Subject Property should be \$19,400.
30. The Taxpayer further alleges that the value of the Subject Property is reduced by a shared easement to access a common driveway shared with the neighboring property.
31. The Taxpayer did not offer information regarding the shared easement that would allow the Commission to quantify its impact on the value of the Subject Property.
32. 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.
33. 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.

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<sup>11</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>12</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013)

**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 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 19,400
<u>Improvements</u>	<u>\$166,900</u>
Total	\$186,300

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

Signed and Sealed: March 27, 2020

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Steven A. Keettle, Commissioner