

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

David P. Stevens,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0338

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 3,804 square foot two-story residence, with a legal description of: Ridges-The Lot 82 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$542,300 for tax year 2017.
3. David P. Stevens (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$495,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$542,300 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 August 20, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. David P. Stevens 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>

<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

1. The Taxpayer alleged that the change in value of the Subject Property from the prior year’s assessment was too great and not equalized with the change in value of the other properties in the area.
2. 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>
3. The Taxpayer alleged that the Subject Property was not assessed uniformly or proportionally with other comparable properties.
4. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>11</sup>

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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).

<sup>11</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

5. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
6. The Taxpayer presented information from the County Assessor's web site regarding five properties that he alleged were comparable to the Subject Property.
7. In addition to this information the Taxpayer discussed the location, builders, quality, condition, finish, fixtures, and other features of three of the five properties which he had viewed inside as well as outside.
8. The Taxpayer stated that the Subject Property was designed and built to be comparable to the Taxpayer's first comparable, other than the orientation of the garage from the front to the side of the house.
9. The County Board presented the Property Record File (PRF) for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
10. The County Appraiser indicated that after reviewing all of the information presented and discussed at the hearing, his opinion is that the Subject Property is highly comparable to the Taxpayer's first comparable property.
11. The Commission finds and determines that the Subject Property and the Taxpayer's first comparable are similarly situated properties with two exceptions: the Subject Property has 300 more square feet of basement finish and it has 100 more units of brick veneer.
12. The Taxpayer has demonstrated that the valuations of similarly situated properties were set at materially different levels.
13. The Commission finds and determines that the value of the Subject Property for tax year 2017 is \$497,800, broken down as \$107,000 for the land component and \$390,800 for the improvements.<sup>13</sup>
14. 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.
15. 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 2017 is vacated and reversed.

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<sup>12</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>13</sup> 3,804 square feet x \$99.45 psf = \$378,308. Added to this are 300 square feet of finished basement x \$39.88 = \$11,964 and 100 units of brick veneer x \$5.50 per unit = \$550. \$378,308 + \$11,964 + \$550 = \$390,822 rounded to \$390,800 for the improvements.

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

Land	\$107,000
<u>Improvements</u>	<u>\$390,900</u>
Total	\$497,900

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 July 17, 2020.

Signed and Sealed: July 17, 2020

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Steven A. Keetle, Commissioner