

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

Bryan R. McCartney,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 18R 0200

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Island Acres NO. 13 LT 2.
2. The Hall County Assessor (the Assessor) assessed the Subject Property at \$254,218 for tax year 2018.
3. The Taxpayer protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$242,894 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$242,894 for tax year 2018.
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 June 19, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Bryan R. McCartney was present at the hearing.
8. Sarah Carstensen, County Attorney, and Kristi Wold, Assessor, were 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 sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until

<sup>1</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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 feels the Subject Property is over assessed as compared to homes in their neighborhood and feel there is an equalization issue. The Subject Property was purchased for \$215,000 in November of 2016.
17. The Taxpayer offered seven comparable properties as evidence of their claims of not being equalized with neighborhood homes that are similar to the Subject Property. When the Commission arrayed the data, we found the Subject Property to be valued at \$143.89 per square foot. The median price per square foot of the comparables was \$105.48. All the comparables were similar in square footage, age, fixtures and year built; the only information missing was the quality and condition of the comparable properties.
18. The Taxpayer also submitted three comparable homes in close proximity to the Subject Property. Once again the Commission arrayed the data given and found the price per square foot of the comparable properties to be \$108.83 whereas the Subject Property is valued at \$143.89. As with the previous comparable properties, the Commission is unable to see how comparable the properties are because no quality or condition ratings were in the evidence provided by the Taxpayer. The Taxpayer did state they had knowledge of a few of the comparable properties and would say they are very similar to the Subject Property as far as quality and condition.

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<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. County 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).

19. The Assessor stated the recent purchase price of the Subject Property was the best evidence of value as the Taxpayer provided an appraisal for the County BOE hearing showing a value of \$215,000. The Assessor also noted new windows were installed as well as some concrete repair to the driveway. The Taxpayer stated the windows and concrete repair were done in 2018 (that is, after the assessment date of January 1, 2018).
20. The Commission was convinced by the Taxpayer's testimony and evidence that the comparable properties are similar in quality and condition and should be equalized with similar neighboring properties. The Commission used the median assessed price per square foot (\$108.83) of the Taxpayer's three "nearest" and "most similar" comparable properties.  $\$108.83 \times 1,574 = \$171,300 + \$16,412 \text{ (land)} = \$187,712$ .
21. 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.
22. 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 2018, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 16,412
<u>Improvements</u>	<u>\$171,300</u>
Total	\$187,712

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 2018.
7. This Decision and Order is effective on August 7, 2019.

Signed and Sealed: August 7, 2019

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James D. Kuhn, Commissioner

