

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

Brett D. Foster,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18R 0285

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Hanscom Place Replat 12 Lot 2 Block 0 LT 2.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$357,500 for tax year 2018.
3. Brett D. Foster (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$345,900 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$345,900 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 January 27, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Brett D. Foster was present at the hearing.
8. Stan Mlotek (the 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> 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).

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 stated the Subject Property was near condemnation at the time of purchase in 2014. The Taxpayer asserted the back taxes with interest and fines were paid and twenty-eight code violations were corrected that needed to be rehabilitated to restore occupancy. The Taxpayer demolished the Subject Property down to the studs and did a complete remodel to the interior; the only original items the Taxpayer kept were the radiant heat registers and boiler, which needed to be repaired.
17. In the 2016 year, an in ground pool was completed as was a perimeter and pool fence. The Taxpayer stated that they had invested a total of \$257,000 into the remodel and investment into the Subject Property and did not understand how the assessment of the property could be so much higher than the actual costs. The Taxpayer noticed some inaccurate data on the Property Record File (PRF): #1. The third floor is being valued as completely finished when in fact it is only dry walled and used for storage; #2. The PRF has HVAC listed as Central Air to Air when in fact the Subject Property does not have central air, only radiant heat.
18. The Taxpayer provided a spreadsheet with twenty three properties showing a 2018 assessed value and a 2019 assessed value as well as the per square foot value of each.

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

<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).

Only three PRFs were provided to the Commission from the properties on the spreadsheet. Without PRFs for the comparables, it is impossible for the Commission to determine if those properties are truly comparable. The parcels at 3814 S 191<sup>st</sup> St. and 3650 Burt St. are residential homes; however, the property at 3055 S 160th PLZ is a multiple residence commercial property. The 3055 S 160th PLZ property was not considered by the Commission as comparable. The two single family residential comparable properties would be considered comparable since they are similar in size and make-up; however, they do not appear to be in the same neighborhood and have differences such as land value, Quality and Condition, and HVAC, and none of those differences were quantified in terms of market value by the Taxpayer.

19. The Appraiser provided evidence showing the County Board of Equalization made an adjustment to the assessment to account for the fact that the third floor is not finished. The referee recommended lowering the value to the Taxpayer's requested value of \$345,900, and the County Board appears to have accepted that recommendation.
20. The Appraiser acknowledged that the HVAC is incorrectly showing central air when in fact there is no central air and only radiant heat. Neither party was able to quantify the value attributed to the HVAC; however, the Appraiser provided a Non-Commercial Cost Detail of the Subject Property showing an HVAC Adjustment of \$5,998. The Commission is convinced the HVAC Adjustment is in error for the Subject Property, and the taxable value of the Subject Property should be lowered by \$5,998 (rounded to \$6,000) to correct this error.
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	\$ 15,600
<u>Improvements</u>	<u>\$324,300</u>
Total	\$339,900

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 2018.
7. This Decision and Order is effective on February 5, 2020.

Signed and Sealed: February 5, 2020

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James D. Kuhn, Commissioner