

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

Russell P. Brown,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18R 0372

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Windgate Ranch Two Replat One Lot 10 Block 0 LT 10.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$573,100 for tax year 2018.
3. Russell P. Brown (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$573,100 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 14, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Russell P. Brown was present at the hearing.
8. Stan Mlotek (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>
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 stated he felt he had an equalization issue with the Subject Property because similar properties in the same neighborhood were being assessed at a lower value.
17. The Taxpayer provided a spreadsheet with five homes from the same neighborhood as the Subject Property. The Taxpayer’s spreadsheet provided addresses, subdivision, square footage, land assessed value, improvement assessed value, price per square foot with improvements and price per square foot without improvements. He then averaged all the square foot costs with and without improvements and applied the averaged value of price per square foot with improvement, which he found to be \$205.08 per square foot, to the Subject Property.
18. The Appraiser stated that the Taxpayer’s spreadsheet did not provide enough information to recommend a different value. The Appraiser stated that all the homes in the Subject Property’s neighborhood are being valued similarly and feels the current assessment is correct.
19. The Taxpayer did not provide any Property Record Files (PRF) for any of the comparable properties on his spreadsheet. Without the PRFs, the Commission cannot determine the comparability of any of the properties on the Taxpayer’s spreadsheet. Even if we could make adjustments for differences in square footage based on the Taxpayer’s spreadsheet,

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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).

differences in factors such as construction style, basement finish, fixtures, amenities, quality and condition, etc., will have an impact on the value of a property.

20. 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.
21. The Taxpayer has not 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 affirmed.

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 affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

|                     |                  |
|---------------------|------------------|
| Land                | \$ 95,600        |
| <u>Improvements</u> | <u>\$477,500</u> |
| Total               | \$573,100        |

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 January 24, 2020.

Signed and Sealed: January 24, 2020

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James D. Kuhn, Commissioner