

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

Dennis M. Quick,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 18R 0085

Decision and Order Affirming the  
Determination of the Otoe  
County Board of Equalization

**For the Appellant:**

Dennis M. Quick,  
Pro Se

**For the Appellee:**

John R. Palmtag,  
Deputy Otoe County Attorney

This appeal was heard before Commissioners James Kuhn and Steven Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Otoe County. The parcel is improved with a 4,567 square foot home. The legal description and property record card for the Subject Property are found at Exhibit 3:15-16.

**II. PROCEDURAL HISTORY**

The Otoe County Assessor determined that the assessed value of the Subject Property was \$530,870 for tax year 2018. Dennis M. Quick (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$445,239. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$530,870.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 4, 2019, with Commissioner Steven Keetle presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties

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<sup>1</sup> E1.

stipulated to the receipt of exchanged exhibits 1 through 8, as well as exhibit 10. All but two pages of exhibit 9 were received over the Appellee's objection.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.<sup>2</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board 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>

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> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

The 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> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the County Board's valuation was unreasonable or arbitrary.<sup>8</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may

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<sup>2</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner* at 283, 811 (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas County 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 County*, 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 County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>9</sup> The Commission may also take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>12</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>13</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>14</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>17</sup>

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<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

## **B. Facts & Analysis**

The Taxpayer purchased the Subject Property in July 2017, for a total purchase price of \$575,000, which included \$16,350 for personal property, making the adjusted purchase price for the real property \$558,650.<sup>18</sup> The Taxpayer alleged that the assessed value of the Subject Property for the 2018 assessment was unreasonable and arbitrary because it was adjusted based on this purchase price alone. The Nebraska Court of Appeals has held that the purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes but is only one fact to be considered in determining actual value.<sup>19</sup> The Taxpayer alleged that he paid more than market value for the Subject Property because his wife liked it, it was on a golf course, it was located steps away from a fishing lake, and he had a grandchild nearby.

The sale of the Subject Property was considered a valid sale by the Otoe County Assessor and it was used alongside other sales and market data to determine assessed values for all properties in the Woodland Hills Golf Club Subdivision North.<sup>20</sup> The sale price of the Subject Property was considered \$558,650, as indicated by the Taxpayer on the revised Real Estate Transfer Statement.<sup>21</sup> Christina Smallfoot, the Otoe County Assessor (the Assessor), testified that the assessed value of the Subject Property increased from its prior assessed value for two reasons: 1) a change in the characteristics of the property after a sales review, and 2) a percentage adjustment made to all properties in the Woodland Hills Golf Club Subdivision North.

The Assessor indicated that the Subject Property was reviewed when it sold because the sale price was so much higher than the assessed value. The Assessor's office relied on an exterior review as well as public information, including the real estate transfer statement and sales listing for the Subject Property, and determined that the characteristics of the Subject Property listed in her records were incorrect. As a result of the review, the listed characteristics of the Subject Property were corrected by increasing the quality rating from average plus to good, increasing the condition rating from good to good plus, increasing the amount of finished living space in the basement from 1,895 to 2,500, increasing the number of bedrooms from four to seven, and

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<sup>18</sup> E3:1-2.

<sup>19</sup> *Reynolds v. Keith Cty. Bd. Of Equal.*, 18 Neb. App. 616, 790 N.W.2d 455 (2010).

<sup>20</sup> E5.

<sup>21</sup> E3:1, E5.

increasing the number of bathrooms from four to five; however, the number of plumbing fixtures was not increased. The Assessor also accounted for remodeling done to the Subject Property in 2010.<sup>22</sup> As a result of these changes, the base value of the Subject Property and some of the miscellaneous improvements were increased, while the effective age and resulting depreciation decreased, resulting in a lower depreciation percentage. The Assessor presented the Property Record File (PRF) for the Subject Property that showed the assessed value before and after these changes.<sup>23</sup> The Assessor testified that changing the quality rating of a property was unusual, but the review of the Subject Property demonstrated that the quality rating for previous assessment years was incorrect and required adjustment.

After the correction of the characteristics of the Subject Property, the Assessor determined that the assessed value of the Subject Property for tax year 2018 was \$530,870. The sale price of the Subject Property as reported by the Taxpayer was \$558,650. The Taxpayer did not present any testimony or exhibits that demonstrate that the Assessor's records of the characteristics of the Subject Property after adjustment by the Assessor were incorrect. The Taxpayer failed to demonstrate that the assessed value of the Subject Property was adjusted based on the purchase price alone.

## V. EQUALIZATION

### A. Law

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.<sup>24</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>25</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>26</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is

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<sup>22</sup> See E2.

<sup>23</sup> E3:15-17.

<sup>24</sup> *Neb. Const.*, Art. VIII, § 1.

<sup>25</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>26</sup> *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

required.<sup>27</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>28</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>29</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>30</sup> If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.<sup>31</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>32</sup>

## **B. Facts & Analysis**

The Taxpayer alleged that the Subject Property was not being assessed at the same amount per square foot as other comparable property. The Taxpayer produce the PRFs for two properties located in the same subdivision, which he alleged were comparable to the Subject Property but which were being assessed at a lower value per square foot than the Subject Property.<sup>33</sup> The PRFs presented by the Taxpayer demonstrate that the differences in per square foot value are due to differences in characteristics of the properties. The Subject Property has a higher quality and condition rating than either of the Taxpayer's comparable properties, and it is the newest. The Subject Property is also the largest of the three properties, having over 800 square feet more above ground living space than the next largest comparable with the largest amount of garage space and the most basement finish, as well as the most square footage classified as one story space.

The Taxpayer asserts that the comparable properties that he presented are of the same quality and condition as the Subject Property but were misclassified by the Assessor with lower quality and condition ratings. In addition to the PRF for each property, the Taxpayer presented

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<sup>27</sup> *Cabela's Inc.* at 582, 623.

<sup>28</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>29</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>30</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>31</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>32</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>33</sup>E9 pages 3D-3E and 4B-4C.

photographs of the exteriors of the two alleged comparables with his notes regarding the features presented.<sup>34</sup> The Taxpayer testified that he had been inside one of the properties, and that he was familiar with the two comparable properties, and he felt that they were of the same quality and condition as the Subject Property.

The Assessor testified that the homes in Woodland Hills Golf Club Subdivision North are not uniform and have varying quality and condition ratings, both higher and lower than the Subject Property. The homes in the subdivision west of the golf course, like the Subject Property, were typically custom built for the owners. The Assessor reviewed the Taxpayer's comparable properties and the information presented and did not change her opinion of the quality or condition ratings of those properties.

As noted earlier, the Taxpayer did not dispute the accuracy of the Assessor's determination of the characteristics of the Subject Property. The Taxpayer has not presented evidence which demonstrates that the Assessor's determination of the characteristics of the properties presented, including the quality and condition ratings, were unreasonable or arbitrary. All of the properties presented were assessed uniformly and proportionally based on their characteristics.

## **VI. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

## **VII. ORDER**

IT IS ORDERED THAT:

1. The decision of the Otoe County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.<sup>35</sup>

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<sup>34</sup> E9:3A & 4.

<sup>35</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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

Land:	\$ 52,900
<u>Improvements:</u>	<u>\$477,970</u>
Total:	\$530,870

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe 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 for purposes of appeal on October 2, 2020.<sup>36</sup>

Signed and Sealed: October 2, 2020

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

<sup>36</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.