

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

Vandle A. and Doris M. Phillips Family  
Trust, Vandle A. Phillips, Trustee,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 16R 0177

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

Background

1. The Subject Property is an unimproved residential parcel, with a legal description of: Parcel C: Tract Beg at Most N'erly Cor of Lot 64 So Ridge Est 2<sup>nd</sup> Fil., th SW 30.19', NE93.7', NE220.36', SE172.85', etc. South Ridge Estates 2<sup>nd</sup> Filing .57 Acre, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$71,070 for tax year 2016.
3. Vandle Phillips (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$71,070 for tax year 2016.
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 27, 2018, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. The Taxpayer was present at the hearing.
8. Jeff Curry, the Dakota County Assessor 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>

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

<sup>2</sup> 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

16. The Subject Property is an unimproved residential lot. The Taxpayer accesses the Subject Property via a driveway on the adjacent parcel which is also owned by the Taxpayer; the only other way to access the Subject Property is by crossing over adjacent parcels.
17. The Taxpayer alleges that the increase in assessed value from the prior year’s assessment is too great.
18. The Courts in Nebraska have held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, the Courts have also held, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>10</sup>
19. The Taxpayer alleged that the value of the Subject Property should be \$25,000 because of the access to the Subject Property.

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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).

20. The County Assessor presented information regarding the assessment of the land component of the Subject Property, as well as the land component of all other parcels in the same neighborhood as the Subject Property.
21. The County Assessor indicated that he could find no information that would indicate what if any impact the limited access to the Subject Property would be so he valued the land component of all parcels in the neighborhood of the Subject Property using the same methodology.
22. The County Assessor further indicted that if the Subject Property were combined with the Taxpayer's adjacent property into a single parcel the assessment would be less but that as of the hearing date the Taxpayer has declined to combine the parcels into a single parcel.
23. The Taxpayer presented information regarding the assessed value of a parcel adjacent to the Subject Property.
24. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>
25. The adjacent parcel is an improved commercial parcel while the Subject Property is an unimproved residential parcel; the adjacent parcel is also approximately six times the size of the Subject Property.
26. The Subject Property and the adjacent parcel of property are not comparable for purposes of determining the value of the Subject Property.
27. The record before the Commission does not contain any other information quantifying the impact, if any, of the limited access to the Subject Property on its value for tax year 2016.
28. 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.
29. 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 2016, is affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

<u>Land</u>	<u>\$71,500</u>
Total	\$71,500

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<sup>11</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 2016.
7. This Decision and Order is effective on March 22, 2019.

Signed and Sealed: March 22, 2019

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Steven A. Keetle, Commissioner