

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

Donald L. Clayton,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 16R 0179

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

Background

1. The Subject Property is a residential lot located on the Missouri River and improved with a 1,728 square foot residence, with a legal description of: Lots 4 & 5 Cottonwood Estates 1.97 Acres, Dakota County, Nebraska.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$165,240 for tax year 2016.
3. The Taxpayer protested this value to the Dakota County Board of Equalization (the County Board) and requested an assessed value of \$96,105 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$158,110 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 2, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Donald L. Clayton was present at the hearing for (Taxpayer).
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>
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> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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 Subject Property is located approximately 11 miles upriver from South Sioux City and is located directly on the Missouri River.
17. In 2011 the Subject Property along with other properties along the Missouri River experienced severe flooding which caused damage to riverbank on the Subject Property.
18. The Taxpayer did not allege that the value of the improvements on the Subject Property were over assessed and did not present evidence regarding the value of the improvements.
19. The Taxpayer alleged that the Subject Property was over assessed compared to a property located on the Missouri River and farther down the same road as the Subject Property but used as a campground (the Campground Property).
20. The Campground Property has camping sips, a boat ramp, a picnic shelter and shower. It is used as a commercial property on a seasonal basis and the lots are rented out on a per lot basis.
21. The Assessor stated that because the Campground Property is a commercial property rather than a residential property it is valued using a different valuation model than the Subject Property.

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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) (Citations omitted).

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<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. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
23. The Commission finds that the Campground Property is not comparable to the Subject Property for purposes of valuation or equalization.
24. The Assessor indicated that Dakota County had performed a new land study using sales of land in the same neighborhood or market area as the Subject Property for the 2016 tax year.<sup>10</sup> The Assessor indicated that properties in this neighborhood were rural residential lots outside the zoning authority of South Sioux City. Using these properties in the same market area as the Subject Property the Assessor determined that for tax year 2016 the value of the first acre was \$40,000 per acre or portion of an acre, the value of the second acre was \$25,000 per acre or portion of an acre, and the value of additional acres was \$10,000 per acre or portion of an acre.
25. The Taxpayer presented information regarding a property owned by Bettie Cooper that was a rural residential property and was located on the Missouri River but which had a lower land valuation for tax year 2016 (the Cooper Property).
26. The Assessor indicated that this property had been classified into a different neighborhood or market area than the Subject Property. The Assessor indicated that these properties were rural residential lots but were located within the zoning authority of South Sioux City. The 2016 model for rural residential properties within the zoning authority of South Sioux City set the value of the first acre at \$12,000 per acre, the value of the second and third acre at \$10,000 per acre, and the value of any additional acres at \$3,000 per acre.
27. The information presented at the hearing demonstrated however that the Cooper Property was not within the zoning authority of South Sioux City and should have been put in the same neighborhood or market area as the Subject Property and valued with the same land valuation model.
28. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”<sup>11</sup>
29. 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>12</sup>
30. 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>13</sup>
31. The information presented to the Commission at the hearing demonstrate that the Taxpayer is entitled to have the assessed value of the land component of the Subject Property determined using the same model as the Cooper property.

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<sup>9</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>10</sup> Rural 4500 (Area 5) River Front Properties, Nbd Code 29.

<sup>11</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

<sup>12</sup> *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

<sup>13</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).

32. The Commission finds and determines that the assessed value of the land component of the Subject Property for tax year 2016 should be \$21,700.
33. 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.
34. 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 2016, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 21,700
Improvements	\$ 72,108
<u>Outbuildings</u>	<u>\$ 7,130</u>
Total	\$100,938

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 (2016 Cum. Supp.).
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 November 1, 2017.

Signed and Sealed: November 1, 2017

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Steven A. Keetle, Commissioner