

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Todd McDonald,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 16R 0211

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

Background

1. The Subject Property is a residential lot located on the Missouri River improved with a 1,301 square foot residence, with a legal description of: East ½ of that part of West 710' of S ½ SW ¼ NE 1/4 – All that part thereof lying East of a line beginning at a point 534' East, Etc. 10-29-7 1 Acre, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$145,845 for tax year 2016.
3. 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 \$172,430 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 July 31, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Todd McDonald was present at the hearing for (Taxpayer).
8. Jeff Curry the Dakota County Assessor and Sam Ferraro an Appraiser in the Dakota County Assessor's Office were 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 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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).

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.”³ 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.”⁴
12. “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 this Constitution.”⁵
13. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁶
14. 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 [sic].”⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁸
15. 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.⁹
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰
17. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

Findings of Fact & Conclusions of Law

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ *Neb. Const.*, Art. VIII, §1.

⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁸ *Id.* at 673, 94 N.W.2d at 50.

⁹ *Neb. Rev. Stat. §77-5016(9)* (2016 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ *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).

¹² *Neb. Rev. Stat. §77-5018(1)* (2016 Cum. Supp.).

19. The Subject Property is located approximately 11 miles upriver from South Sioux City and is located directly on the Missouri River.
20. 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. The Taxpayer has rocked the bank and done other work to the Subject Property due to damage from the flood.
21. 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.
22. The Taxpayer was concerned about the increase in the valuation of the land component of the property from the assessed value in prior years.
23. Additionally the Taxpayer alleged that the road adjacent to the Subject Property was a negative characteristic of the Subject Property along with the limited number of water hookups and limited capacity of the water line leading to the properties on the same road as the Subject Property.
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.¹³ These sales were located along the same road as the Subject Property located on the Missouri River and with the same or similar access to water as the Subject Property. 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, the value of the second and third acre was \$25,000 per acre, and the value of additional acres was \$10,000 per acre.
25. The Assessor also stated that for the assessment in the 2011 to 2015 tax years the County Assessor's office had applied a cost to cure reduction to the value of rural residential lots that had experienced flooding but that reduction was no longer applied.
26. The information presented to the Commission indicates that all rural residential riverfront lots were valued in the same manner for tax year 2016.
27. 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).
28. 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.
29. 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 then the Subject Property.

¹³ Rural 4500 (Area 5) River Front Properties, Nbhd Code 29.

30. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
31. The Commission finds that the Campground Property is not comparable to the Subject Property for purposes of valuation or equalization.
32. 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.
33. 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:

Land	\$ 40,000
Improvements	\$121,620
<u>Outbuilding</u>	<u>\$ 10,810</u>
Total	\$172,430

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

Steven A. Keetle, Commissioner

¹⁴ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).