

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Keith Edquist,
Appellant,

Case Nos: 16R 0499, 16R 0505, 16R 0508

v.

Decision and Order Reversing the
Determinations of the Douglas
County Board of Equalization

Douglas County Board of Equalization,
Appellee.

Background

1. The Subject Property in Case No 16R 0499 is an unimproved residential lot with a legal description of: Northern Hills Estates Lot OLA Block A, Irreg 10.395 AC, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No 16R 0499 at \$30,600 for tax year 2016.
3. Keith Edquist (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$1,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property in Case No 16R 0499 was \$30,600 for tax year 2016.
5. The Subject Property in Case No 16R 0505 is an unimproved residential lot with a legal description of: Northern Hills Estates Three Lot OLF Out Lot F 0.099 AC, Douglas County, Nebraska.
6. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No 16R 0505 at \$29,500 for tax year 2016.
7. Keith Edquist (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$100 for tax year 2016.
8. The County Board determined that the taxable value of the Subject Property in Case No 16R 0505 was \$29,500 for tax year 2016.
9. The Subject Property in Case No 16R 0508 is an unimproved residential lot with a legal description of: Northern Hills Estates Two Lot OLA Block 0, 0.782 AC, Douglas County, Nebraska.
10. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No 16R 0508 at \$2,300 for tax year 2016.
11. Keith Edquist (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$0 for tax year 2016.
12. The County Board determined that the taxable value of the Subject Property in Case No 16R 0508 was \$1,000 for tax year 2016.

13. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
14. A Single Commissioner hearing was held on July 26, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
15. John K. Green, Attorney, and Keith Edquist were present at the hearing for the Taxpayer.
16. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, and Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser), were present for the County Board.

Applicable Law

17. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
18. The Commission's review of a determination of the County Board of Equalization is de novo.²
19. 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
20. 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.⁵
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
22. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² 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).

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

23. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

24. At the hearing before the Commission the parties agreed that, based on their characteristics, each of the three Subject Properties were unbuildable and should each be valued at \$100.
25. The Commission finds and determines that the assessed value of each of the Subject Properties for tax year 2016 is \$100.
26. 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.
27. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable, and the decisions of the County Board should be vacated.

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 are vacated and reversed.
2. The taxable value of the Subject Properties for tax year 2016 are:

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|---------------------------|-------|
| Case No. 16R 0499: | \$100 |
| Case No. 16R 0505: | \$100 |
| Case No. 16R 0508: | \$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 2016.
7. This Decision and Order is effective on July 10, 2020.

Signed and Sealed: July 10, 2020

Steven A. Keetle, Commissioner

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).