

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

Betty Goodier,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 17R 0074

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

Background

1. The Subject Property is a 1,498 square foot ranch style residential property, with a legal description of: Lot 15 Block 2 Cardinal Court, South Sioux City, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$219,320 for tax year 2017.
3. Betty Goodier (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$219,320 for tax year 2017.
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 29, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Betty Goodier was present at the hearing.
8. Jeff Curry, the County Assessor, and Sam Ferraro, an appraiser for the 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.<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> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> See, 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 Taxpayer alleges that the value of the Subject Property should be lower due to chemical contamination and partial remediation work.
17. The Taxpayer moved into the Subject Property in August of 2016 and in October of 2016 the Subject Property experienced an influx of water and gasses through its sewer system connection.
18. The City of South Sioux City began restoration work on the Subject Property in 2016, including removal of the carpets and other floor covering and some other porous materials from the interior, but the restoration work was halted pending litigation regarding the influx of gasses into several nearby properties.
19. The Taxpayer stated that the level of Hydrogen Sulfate inside the Subject Property is high as indicated by a meter located inside the Subject Property and that the interior of the Subject Property is permeated with a chemical smell.

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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).

20. The Taxpayer indicated that she did not know what it would take to return the Subject Property to its condition prior to the influx of gasses or otherwise make the Subject Property livable.
21. The County Assessor indicated that up to the date of the hearing he has not been able to determine the impact of the influx of gasses on the value of any property in Dakota County. The County Assessor further indicated that the sales data in the area of the Subject Property, while limited, did not demonstrate any difference in sales prices for properties impacted by a potential gas influx versus not impacted properties.
22. While the information presented to the Commission indicates that there was an event that caused an influx of gasses in the Subject Property there is not anything which would quantify its impact. No information about the exact nature of the gasses present, the cost of remediation, an impact on sales, or the quantification of a similar event were presented in the hearing.
23. The County Assessor indicated that for tax year 2018 the condition rating of the Subject Property was reduced to Fair to account for the condition of the interior of the Subject Property caused by the restoration work, resulting in an assessed value of \$151,530 for the improvements on the Subject Property.
24. The information presented demonstrated that the condition of the Subject Property as of the assessment date was the same as it was in the subsequent tax year and that therefore the assessed value of the improvements on the Subject Property for tax year 2017 should be \$151,530 which, together with a land value of \$35,090, would result in a total assessed value of \$186,620 for tax year 2017.
25. 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.
26. 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 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 35,090
<u>Improvements</u>	<u>\$151,530</u>
Total	\$186,620

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 2017.
7. This Decision and Order is effective on April 24, 2019.

Signed and Sealed: April 24, 2019

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Steven A. Keetle, Commissioner