

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

Betty & Mary-Therrien Garwood,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case Nos: 17R 0259, 17R 0260, 17C 0168,  
& 17C 0169

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

**Background**

1. The Subject Property in Case No. 17R 0259 is a 7.1 acre parcel with a legal description of: Comm at the SE cor of said NE ¼ of Sec 4, th along S line of said NE ¼ 33' to pt on the W R.O.W. line of C avenue, the cont along S line etc 4-28-9 7.1 acres M/L, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property in Case No 17R 0259 at \$204,115 for tax year 2017.
3. Betty & Mary-Therrien Garwood, (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 \$204,115 for tax year 2017.
5. The Subject Property in Case No 17R 0260 is a .52 acre parcel with a legal description of: All Lots 4 5 6 7 8 Part Lot 9, Block 37, Dakota City, Dakota County, Nebraska.
6. The County Assessor assessed the Subject Property in Case No 17R 0260 at \$23,260 for tax year 2017.
7. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2017
8. The County Board determined that the taxable value of the Subject Property was \$23,260 for tax year 2017.
9. The Subject Property in Case No 17C 0168 is a 7.86 acre parcel with a legal description of: Tract Beg 773.28' South of the NE Corner of the SE ¼ NE ¼, Th W639.96', Th S550.04', Th E639.96', Then North to POB 4-28-9 7.86 Acres M/L, Dakota County, Nebraska.
10. The County Assessor assessed the Subject Property in Case No 17C 0168 at \$266,120 for tax year 2017.
11. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2017.
12. The County Board determined that the taxable value of the Subject Property was \$266,120 for tax year 2017.

13. The Subject Property in Case No 17C 0169 is a 25.36 acre parcel with a legal description of: A Tract in W ½ NW ¼ Lying South & West of Burlington RR R.O.W. & North of New 164<sup>th</sup> Street Except Tract in SE Corner Sold to City of South Sioux City 4-28-9 25.36 Acres More or Less, Dakota County, Nebraska.
14. The County Assessor assessed the Subject Property in Case No 17C 0169 at \$304,235 for tax year 2017.
15. The Taxpayer protested this value to the County Board and requested a lower assessed value for tax year 2017
16. The County Board determined that the taxable value of the Subject Property was \$304,235 for tax year 2017.
17. The Taxpayer appealed these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
18. A Single Commissioner hearing was held on August 30, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
19. Betty Garwood and Scott Garwood were present at the hearing for the Taxpayer.
20. Jeff Curry, the County Assessor, was present for the County Board.

#### Applicable Law

21. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
22. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
23. 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>

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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).

<sup>3</sup> *Brenner* at 283, 811.

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

24. 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>
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
26. 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>
27. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

28. The Taxpayer indicated that some of the Subject Properties were annexed as part of a commercial development project.
29. When the annexation took place, all of the Subject Properties were reclassified as commercial parcels and valued as commercial parcels.
30. The Taxpayer asserted that the unimproved acres of all of the Subject Properties should be valued as agricultural or horticultural land.
31. The Taxpayer stated that as of the assessment date, the Subject Properties were actively being farmed or utilized as farm home sites or farm sites in conjunction with other agricultural or horticultural land.
32. The Taxpayer did not provide information regarding the soil types on the Subject Properties for purposes of determining their per acre assessed values as agricultural or horticultural land, but rather presented information regarding overall average per acre assessed values for agricultural or horticultural land near the Subject Properties, regardless of soil type, and assessed values from prior assessment years.
33. The County Assessor indicated at the hearing that the Subject Properties should not be classified and assessed as commercial property for tax year 2017.
34. The County Assessor stated that based on all of the information provided and available to him, the Subject Property in Case No. 17C 0168 should be valued at \$42,385 as agricultural and horticultural land based on the soil types present on the parcel and the per acre values for tax year 2017.
35. The County Assessor stated that that based on all of the information provided and available to him, the Subject Property in Case No. 17C 0169 should be valued at \$132,325 as agricultural and horticultural land based on the soil types present on the parcel and the per acre values for tax year 2017.

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<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).

36. The Assessor stated that based on all of the information provided and available to him, the Subject Property in Case No. 17R 0259 should be valued at \$140,050 with a land value of \$21,435 using farm home site and farm site per acre values for tax year 2017, \$115,635 for the home improvements, and \$2,980 for the outbuildings located on this property.
37. The Assessor indicated that based on all of the information provided and available to him, the Subject Property in Case No. 17R 0260 should be classified as residential property and be valued at \$12,860 based on sales of comparable property.
38. The Commission finds and determines that the assessed values of the Subject Properties for tax year 2017 should be: 17C 0168 \$42,385; 17C 0169 \$132,325; 17R 0259 \$140,050; and 17R 0260 \$12,860.
39. 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.
40. 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2017, are vacated and reversed.
2. The taxable values of the Subject Properties for tax year 2017 are:

**Case No. 17C 0168**

<u>Land</u>	\$ 42,385
Total	\$ 42,385

**Case No. 17C 0169**

<u>Land</u>	\$132,325
Total	\$132,325

**Case No. 17R 0259**

Land	\$ 21,435
Improvements	\$115,635
<u>Outbuildings</u>	\$ 2,980
Total	\$140,050

**Case No. 17R 0260**

<u>Land</u>	\$ 12,860
Total	\$ 12,860

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 May 14, 2019.

Signed and Sealed: May 14, 2019

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Steven A. Keetle, Commissioner