

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

Supreme Wood Products, Inc.,  
Appellant,

Case Nos: 18C 0173, 18C 0174 & 18C 0175

v.

Decision and Order Affirming  
County Board of Equalization

Dakota County Board of Equalization,  
Appellee.

**Background**

1. The Subject Properties are three commercial parcels with land and buildings, with legal descriptions of: Parcel in Gov't Lot 4 Beg at the NW corner of Gov't Lot 4 Thence E'erly along north line Approx. 360' Etc. Unplatted 29-29-9 2.6 acres more or less (Case No. 18C 0173), Tract of land in Gov't Lot 3 Commencing at the NW corner of Gov't Lot 3 Thence S on West line of Gov't Lot 3 for 829.46' Etc. Unplatted 29-29-9 (18C 0174), Tract of land in Gov't Lot 3 Comm at NW cor of Gov't Lot 3 Th. S on W line of Gov't Lot 3 for 1140.59' to POB Etc. Unplatted 29-29-9 1.14 acres more or less (18C 0175).
2. For each of the Subject Properties for tax year 2018, the Dakota County Assessor (the Assessor) determined the assessed value; Supreme Wood Products (the Taxpayer) requested a lower value; and the Dakota County Board of Equalization (the County Board) determined the taxable value, as shown in the following table:

<b>CASE NO.</b>	<b>ASSESSOR</b>	<b>COUNTY BOARD</b>
<b>18C 0173</b>	\$130,710	\$130,710
<b>18C 0174</b>	\$355,620	\$355,620
<b>18C 0175</b>	\$61,560	\$61,560
<b>TOTAL</b>	\$547,890	\$547,890

3. The Taxpayer appealed each of these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
4. A Single Commissioner hearing was held on July 12, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
5. Carroll P. Muff Jr. was present at the hearing for the Taxpayer.
6. Joe Wilson, Contracted Appraiser, was present for the County Board.

**Applicable Law**

7. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>

<sup>1</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

8. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
9. 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>
10. 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>
11. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
12. 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>
13. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

14. The Taxpayer stated his properties are overvalued in part due to the lack of direct access to Highway 77. Poor drainage is another issue with one of the Subject Properties, which needs to be pumped after a rain storm.
15. The Taxpayer mentioned sales of properties he thought would be comparable but no property record files (PRF) were provided to the Commission to see the details of each of those properties and determine if they are actually comparable to the Subject Property. The Taxpayer stated the City offered to purchase the Subject Property for \$300,000 but no written contract or offer was provided to the Commission as evidence.

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<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 v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<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. County 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).

16. The Taxpayer spoke in large part about the amount of taxes that were being paid by other property owners compared to what he was paying in taxes. This Commission deals with property valuations and does not have jurisdiction over the rates of taxes that are being levied.
17. The Appraiser provided PRF for the Subject Property as well as one comparable for the improvements and two comparable properties for the land value. The Appraiser stated the land valuations along the Highway 77 corridor are assessed at a higher price per square foot than the Subject Property. The two comparable land sales indicate that the current land assessment is correct and the Taxpayer has not given any evidence to show that it is being incorrectly valued. The Appraiser's one improved sale does not accurately show what the market is for properties such as the Subject Property; however, the Taxpayer did not provide any PRF or other proof to show the Assessor was valuing the Subject Property incorrectly.
18. 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.
19. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018, are affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

**PID 220071608 (Case No. 18C 0173)**

Total \$130,710

**PID 220058350 (Case No. 18C 0174)**

Total \$355,620

**PID 220072515 (Case No. 18C 0175)**

Total \$61,560

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 2018.
7. This Decision and Order is effective on August 5, 2019.

Signed and Sealed: August 5, 2019

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James D. Kuhn, Commissioner