

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

Marla E. Dugger,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee.

Case No: 20R 0127

**DECISION AND ORDER  
AFFIRMING THE DECISION OF THE  
KEITH COUNTY BOARD OF  
EQUALIZATION**

Background

1. The Subject Property is a residential parcel with a legal description of Lot 1 Alsvary's ADM Replat .36A 1 ABC-2-BC-AH---16 S-T-R 01-15-41.
2. The Keith County Assessor assessed the Subject Property at \$379,280 for tax year 2020.
3. Marla E. Dugger (the Taxpayer) protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$228,450 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$379,280 for tax year 2020.
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 14, 2021, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Marla Dugger was present at the hearing.
8. Renae Zink (the Assessor) and Randy Fair (Legal Counsel) 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 a determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> 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 v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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 stated she purchased the Subject Property January 10, 2020, for \$202,000. The Taxpayer stated it was a private sale with the former owners; the Taxpayer offered \$202,000 and paid cash for the property. The Taxpayer stated the Subject Property is an investment property and she rents the property out. The Taxpayer stated the Subject Property is in need of some repairs such as roof, and there is no central air or heat. The Taxpayer has made some repairs to the plumbing.
17. The Taxpayer stated that although the Subject Property is considered lake front, the water from the lake is not a constant depth and the water is about 542 yards from the house. The Taxpayer stated a person might have to drive 3 miles to find a spot to be able to put a boat in the water. The Taxpayer stated that water has been within 100 yards of the Subject Property only twice in the last 15 years.
18. The Taxpayer stated a neighboring home has been listed for sale for \$240,000 for the past four years and has only had offers of under \$200,000. The Taxpayer did not provide any property record files (PRF) or any other evidence for the Commission to analyze and compare to the Subject Property.
19. The Assessor stated a complete reappraisal of the Subject Property’s neighborhood was done for the 2020 tax year as sale prices continued to increase over the assessed values. The Assessor stated Lake McConaughy residential properties are in high demand and sale

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<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).

prices continue to increase. The Assessor stated the preliminary statistics showing the assessed value compared to the sales prices were at 78%, so the neighborhood was reappraised using newly updated costing tables that were built using market information gathered from 147 sales of vacant and improved parcels.<sup>9</sup>

20. The Assessor did not consider the sale of the Subject Property to be an arm's length transaction. The Assessor stated that it was not a disqualified sale just because it was a private transaction, but she relied on other factors such as the previous owners being strongly motivated to sell and the Subject Property not being on the open market for there to be any competition.
21. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."<sup>10</sup>
22. "Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade."<sup>11</sup>
23. 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.
24. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 27,775
<u>Improvements</u>	<u>\$351,505</u>
Total	\$379,280

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<sup>9</sup> Nebraska law requires an assessment/sales ratio of 92% to 100% for the class of residential property. See Neb. Rev. Stat. § 77-5023.

<sup>10</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>11</sup> *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith 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 2020.
7. This Decision and Order is effective on December 29, 2021.

Signed and Sealed: December 29, 2021

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James D. Kuhn, Commissioner