

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

Robin S. Custer,  
Appellant,

v.

Dodge County Board of Equalization,  
Appellee.

Case No: 20R 0312

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

Background

1. The Subject Property is a residential parcel with a legal description of Lake Ventura First Add Lot 96.
2. The Dodge County Assessor assessed the Subject Property at \$462,781 for tax year 2020.
3. Robin S. Custer (the Taxpayer) protested this value to the Dodge County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$462,781 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 August 5, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Robin S. Custer was present at the hearing.
8. Debbie Churchill (the Assessor) was 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 there is competent evidence to the contrary presented, and the presumption disappears

<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).

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 the main issue with the appeal is the land value of the Subject Property. The Taxpayer stated other properties are bigger, have more lake frontage and are in better locations than the Subject Property.
17. The Taxpayer provided property record files (PRF) of other Ventura Lake properties showing how some properties are 1.5 or 2 lots in size but are being assessed the same value as the Subject Property. The Taxpayer stated not all lots are equal and shouldn’t be valued the same. The Taxpayer asserted that the referee’s recommendation to lower the lot value should be upheld.
18. The Assessor stated that lake lots were selling for a premium price regardless of size. Three vacant lot sales from 2016 through 2017 showed purchase prices of \$210,000 to \$250,000 for lots varying in size from 24,829.2 square feet to 44,431.2 square feet. The Assessor did not see any considerations for size, slope, exposure or shape of lots in the recent vacant land sales.
19. The Assessor’s office reviewed all Lake Ventura lots and dwellings in 2019 and 2020. The Assessor valued all lots on Lake Ventura at \$185,000 and pointed to the latest three vacant lot sales as evidence that the current lot value was fair and equitable and could have possibly been set higher.
20. The Commission recognizes the referee recommended lowering the lot value of the Subject Property. However, because all lots in the neighborhood are assessed at the same

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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).

value, any change to the land value would cause dis-equalization in the Lake Ventura neighborhood.

21. 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.
22. 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	\$185,000
<u>Improvements</u>	<u>\$277,781</u>
Total	\$462,781

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 March 18, 2022.

Signed and Sealed: March 18, 2022

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James D. Kuhn, Commissioner