

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

Fernando Marquez,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 16R 0015

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

Background

1. The Subject Property is a residential property improved with a 2,292 square foot ranch style home, with a legal description of: Lot 37 Except North 17' South Ridge Estates 8<sup>th</sup> Filing, South Sioux City, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$290,890 for tax year 2016.
3. The Taxpayer protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$290,890 for tax year 2016.
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 31, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Fernando Marquez was present at the hearing (Taxpayer).
8. Jeff Curry the Dakota County Assessor and Sam Ferraro an Appraiser in the Dakota 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 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>5</sup>
13. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>6</sup>
14. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>7</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>8</sup>
15. 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>9</sup>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>
17. 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>11</sup>
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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

<sup>5</sup> *Neb. Const.*, Art. VIII, §1.

<sup>6</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>7</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>8</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>9</sup> *Neb. Rev. Stat. §77-5016(9)* (2016 Cum. Supp.).

<sup>10</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>11</sup> *Cf. Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>12</sup> *Neb. Rev. Stat. §77-5018(1)* (2016 Cum. Supp.).

## Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that his property was not assessed uniformly and proportionally with other comparable properties.
20. To support this allegation the Taxpayer stated that he protested the assessed value of the Subject Property and his protest was rejected while his neighbor to the East protested the assessed value of his property and the assessed value of the Property to the East was reduced by the County Board.
21. The Taxpayer stated that the result was that the Subject Property received a greater increase in assessed value than the property to the East for the 2016 tax year.
22. The Property Record Files (PRFs) for the Subject Property and the property to the east indicate that the Subject Property is just slightly larger and has a higher condition rating than the property to the east while the property to the east has a larger lot. The PRFs also show that the Subject Property has a slightly higher per square foot value but a lower land component value than the property to the east.
23. The Assessor presented the PRFs for other similar properties in the same neighborhood as the Subject Property and differences between their values correspond with different characteristics such as size, quality, and condition as well.
24. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>13</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>14</sup> For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
25. To further support his allegation that his property was treated differently than other similar property the Taxpayer presented information that indicated that the 2017 assessed value of the property to the west of the Subject Property was lowered even though that property owner did not protest his assessed valuation.
26. The Assessor indicated that there were several properties that received assessment adjustment from the County Board in 2017 due to clerical errors which were corrected by the County Board and that the property to the west of the Subject Property was one of those properties while the Subject Property was not.
27. The Taxpayer did not appeal the 2017 assessment of the Subject Property to the Commission and therefore the Commission would not have the authority to adjust the 2017 assessed value of the Subject Property.<sup>15</sup>
28. 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.

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<sup>13</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>14</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

<sup>15</sup> See, *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 99, 620 N.W.2d 90, 99 (2000)(Citations omitted).

29. 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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 28,770
<u>Improvements</u>	<u>\$262,120</u>
Total	\$290,890

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 (2016 Cum. Supp.).
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 2016.
7. This Decision and Order is effective on November 1, 2017.

Signed and Sealed: November 1, 2017

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Steven A. Keetle, Commissioner