

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

Dale A. Masters,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 17R 0073

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

Background

1. The Subject Property is a rural parcel improved with a 2,242 square foot one story residence and outbuilding, which has a legal description of: S ½ SW ¼ NW ¼ 14-28-7, 20 acres, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$337,790 for tax year 2017.
3. Dale A. Masters, (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested an assessed value of \$163,524 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$333,460 for tax year 2017.
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 29, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Dale A. and Virginia A. Masters were present at the hearing.
8. Jeff Curry, the County Assessor, and Sam Ferraro, an appraiser for 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 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).

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. 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 alleged that the assessed value of the improvements was too high when compared to the assessed value of the improvements on other nearby properties.
17. The Taxpayer and the County Assessor presented information regarding several nearby properties which showed that the differences in assessed values of their improvements were related to differences such as basement size and finish, garage size, decks and other amenities.
18. The Taxpayer alleged that the location of the Subject Property, near a cell phone tower and on a road that is minimally maintained limiting certain types of access, negatively impacts the value of the Subject Property.
19. The Taxpayer did not present any information which would allow the Commission to quantify the impact of the location of the Subject Property near a cell phone tower and on a minimally maintained road on its assessed value.

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

<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. 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).

20. The Taxpayer alleged that portions of the Subject Property should be assessed as agricultural or horticultural land rather than as residential land and that therefore the assessed value of the land component should be lower.
21. The County Assessor stated that in Dakota County any parcels of 20 acres or less are classified as residential parcels and assessed as residential lots. The Subject Property has a lot value of \$63,000 as a 20 acre rural residential parcel.
22. The County Assessor presented information regarding the soil types located on the Subject Property and the per acre assessed values of agricultural and horticultural land in the agricultural market area in which the Subject Property would be if it were classified as an agricultural or horticultural parcel.
23. The County Assessor stated that if the Subject Property were used for agricultural or horticultural purposes and assessed as an agricultural and horticultural parcel with a farm home site and farm site acres<sup>9</sup> its assessed value would be \$80,022 for the land component rather than \$63,000.
24. The Taxpayer's allegation regarding the assessed value of the Subject Property being lower if assessed as agricultural or horticultural land has no merit.
25. 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.
26. 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 2017, is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 63,000
<u>Improvements</u>	<u>\$270,460</u>
Total	\$333,460

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.

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<sup>9</sup> The Taxpayer does not own any additional parcels containing any agricultural or horticultural acres.

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 April 30, 2019.

Signed and Sealed: April 30, 2019

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Steven A. Keetle, Commissioner