

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

Donald L. Clayton,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 17R 0115

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

Background

1. The Subject Property is a 1,728 square foot two-story residential property, with a legal description of: Lots 4 & 5 Cottonwood Estates 1.97 Acres, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$148,685 for tax year 2017.
3. Donald L. Clayton, (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested an assessed value of \$84,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$177,145 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 28, 2018, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Donald L. Clayton was present at the hearing.
8. Jeff Curry, the Dakota County 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 the 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

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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).

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 land component and the improvement component of the value of the Subject Property were over assessed for tax year 2017.
17. The Taxpayer presented information regarding parcels of other property near the Subject Property. The Taxpayer did not present the Property Record Files (PRF) for the other properties.
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.
19. The information presented regarding parcels of property located near the Subject Property demonstrate that the physical characteristics vary (style, condition, amenities) and are not comparable to the Subject Property. The lack of the PRF does not allow the Commission to analyze the value placed on different physical characteristics for assessment purposes.
20. The County Assessor presented information, including the PRF, for several properties with the same quality and condition rating as the Subject Property.
21. These PRF indicate that these properties have similar characteristics which are assessed very similarly to each other and the Subject Property; the differences in assessments are

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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).

related to characteristics and amenities of the properties such as square footage, enclosed porches, or decks.

22. The Assessor also provided information relating to the recent sales of several properties in the same neighborhood as the Subject Property that support the values attributed to the characteristics and amenities of the Subject Property and the other properties near the Subject Property.
23. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior year was excessive compared to the changes in the assessed values for other properties in the county.
24. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup> For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
25. The Assessor stated that the values of many properties in the Subject Property's neighborhood changed due to the recent sales in the neighborhood indicating different values for different characteristics for the current assessment year.
26. The information provided also indicates that the assessed value of the Subject Property changed significantly due to two special circumstances between the current assessment year and the prior assessment year. The assessed value of the land component of the Subject Property was reduced in the prior year to equalize its value with a misclassified but otherwise comparable property. Additionally, the referee for the County Board inspected the Subject Property as part of the protest process and revised the characteristics of the property based on that inspection, which caused an increase in value for the improvements.
27. The Assessor indicted that the property with which the Subject Property's land value had been equalized in the prior year had been properly classified for the 2017 tax year to eliminate the disequalization between it and the Subject Property. No other information regarding the value of this previously misclassified property was presented to the Commission in the hearing.
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.
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.

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<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</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).

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	\$ 64,250
Improvements	\$103,005
<u>Outbuiding</u>	<u>\$ 9,890</u>
Total	\$177,145

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 2017.
7. This Decision and Order is effective on March 29, 2019.

Signed and Sealed: March 29, 2019

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Steven A. Keetle, Commissioner