

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

M. Dean Dudley,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 17R 0241

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

Background

1. The Subject Property is a 1,350 square foot ranch style residential parcel, with a legal description of: Lot 2 29<sup>th</sup> Street Subdivision, South Sioux City, Dakota County, Nebraska.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$182,765 for tax year 2017.
3. M. Dean Dudley and Rosali Bates, (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$182,765 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. M. Dean Dudley and Rosali Bates were 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>

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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 per-square foot value of the Subject Property was not fair and equitable when compared to other properties on the same street.
17. The Taxpayer presented tables containing information regarding parcels of property near the Subject Property, including the per-square-foot assessments. The tables did not contain important information regarding the properties such as style (ranch, two story, etc.) quality, condition, basement size, and amount of basement finish. Additionally, the Taxpayer did not present the Property Record Files (PRF) for the other properties to allow the Commission to determine the comparability of the other properties on the tables to the Subject Property.
18. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
19. The County Assessor presented information, including the PRF, for several ranch style properties with the same quality and condition rating as the Subject Property.

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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).

<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

20. These PRF indicate that these properties are assessed very similarly to each other and the Subject Property. The differences in assessments are related to features of the properties such as finished basement square footage, enclosed porches, or decks.
21. The Assessor also provided information relating to the recent sales of several ranch style properties with the same quality and condition rating as the Subject Property that support the values attributed to the characteristics and amenities of the Subject Property and the other ranch style properties with the same quality and condition rating.
22. However, the sale information indicates that half of the sold ranch style properties presented were advertised for sale as having underground sprinkler systems which are not listed on their PRF.
23. The Subject Property does not have an underground sprinkler system and does not have an underground sprinkler system listed on its PRF.
24. The County Assessor presented information regarding underground sprinkler systems and the value attributed to a property for an underground sprinkler system. The information provided by the County Assessor indicated that the value of the improvements on the Subject Property should be reduced by \$2,690 to account for the lack of a sprinkler system on the Subject Property.
25. Based on the information presented the Commission finds that the value of the Subject Property should be \$180,075, consisting of an improvement value \$146,175, and land value of \$33,900.
26. The Taxpayer alleged that the assessed value of the Subject Property increased at a greater rate than the assessed value of nearby properties.
27. The tables of properties presented indicates that the assessed values of properties increased by different percentages, some more than the Subject Property and some less. As noted above, the Taxpayer did not present the Property Record Files (PRF) for the other properties to allow the Commission to determine the comparability of the other properties on the tables to the Subject Property.
28. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>10</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>11</sup>
29. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
30. The Taxpayer has 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 vacated.

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<sup>10</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>11</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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 33,900
<u>Improvements</u>	<u>\$146,175</u>
Total	\$180,075

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