

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

Shad N. Berner,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 16R 0034

Decision and Order Affirming the Decision  
of the Otoe County Board of Equalization

Background

1. The Subject Property is an unimproved residential parcel adjacent to an improved residential parcel owned by the same Taxpayer and located in the City of Syracuse, Otoe County, Nebraska. The legal description of the parcel is LOT 1 L DUMKE SUBD IN NW1/4 SYRACUSE.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$15,270 for tax year 2016.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$1,750 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$7,630 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 August 24, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Shad N. Berner and Kerby Berner were present at the hearing.
8. John R. Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christina Smallfoot, Deputy Otoe County Assessor 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

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 Subject Property is a 142.6 foot by 164.7 foot (.54 acres) vacant lot located behind a residential lot that is improved with a single family residence.
17. Shad Berner explained that he purchased both properties at the same time, and that the Subject Property was purchased because it provided an extended space beyond the back yard of the residence for his children to play. As such, there are no streets or driveways that provide direct access to the Subject Property.
18. After Mr. Berner filed the Protest, and after further review of the assessment of the Subject Property and other residential properties in Syracuse, the Assessor recommended the lower value of \$7,630 to the County Board at the Protest proceeding.
19. The assessment of the Subject Property for tax year 2015 was \$1,750. The Taxpayer argued that the increase in taxable value from tax year 2015 to tax year 2016 was too much.

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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) (Citations omitted).

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<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. 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>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

20. 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.
21. The Commission was provided with the per square foot assessments of the Subject Property and other properties in the immediate neighborhood of the Subject Property. As determined by the County Board, the land component of the Subject Property was assessed at approximately \$0.32 per square foot.<sup>11</sup> The land component of one very similar property located near the Subject Property that also had a vacant lot on the backside of the back yard of an improved residential parcel was assessed at \$0.41 per square foot. Other lots in the same neighborhood were assessed at \$0.65 per square foot.
22. The Taxpayer provided no other information to quantify the value of the Subject Property.
23. The Commission finds that as compared to the other lots in the neighborhood, the Subject Property appears to have been significantly underassessed in prior tax years.
24. The Commission also finds that as compared to comparable properties in the same market area, the Subject Property was not assessed in an amount in excess of market value.
25. The Commission was advised that the Assessor had identified the need to reassess the actual values of the land components of residential properties in the City of Syracuse.
26. 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.
27. 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 \$7,630.
3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

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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).

<sup>11</sup> \$7,630 / 23,486 square feet = \$0.324874 per square foot.

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 August 31, 2017.

Signed and Sealed: August 31, 2017

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Robert W. Hotz, Commissioner