

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

Zygmunt E. Orlowski,  
Appellant,

v.

Stanton County Board of Equalization,  
Appellee.

Case No: 17R 0245

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

Background

1. The Subject Property is a residential parcel improved with a 2,490 square foot 1 ½ story single family home, with a legal description of: Lot #1 Thor’s Subdivision, Springbranch Precinct, 5.942 Acres (PT NW 9-24-1), Stanton County, Nebraska.
2. The Stanton County Assessor (the County Assessor) assessed the Subject Property at \$380,140 for tax year 2017.
3. The Taxpayer protested this value to the Stanton County Board of Equalization (the County Board) and requested an assessed value of \$363,120 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$380,140 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 June 27, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
7. Zygmunt E. and Jena Orlowski were present at the hearing.
8. Cheryl Wolverton, Stanton County Assessor (the 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>

<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. 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 previously acknowledged errors on the Property Record File (PRF) have not been corrected for the 2017 assessment.
17. The Taxpayer further alleged that the cost to remediate hail damage to the dwelling on the Subject Property was approximately \$6,000 and that there were continuing water issues that reduced the value of the home (Improvement) on the Subject Property.
18. The Assessor presented information that indicated that the previous errors on the PRF from prior tax years have been corrected (i.e. the amount of partition finish in the basement, etc.) but that due to hail damage and continued water issues that existed as of the assessment date increased physical depreciation should be applied, and her opinion of value for the Improvement as of the assessment date would be \$227,410.
19. The Commission finds that the assessed value of the Improvement on the Subject Property is \$227,410 for tax year 2017.
20. The Taxpayer alleged that the depreciation applied to the outbuildings is incorrect and that therefore their assessed valuation is too high.

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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. 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.).

21. The Assessor stated that in her opinion the depreciation to be applied to the larger of the two outbuildings should be increased, and that her new opinion of value for all of the outbuildings on the Subject Property as of the assessment date would be \$100,470.
22. The Commission finds that the assessed value of the outbuildings on the Subject Property is \$100,470 for tax year 2017.
23. The Taxpayer alleged that the portion of the assessment attributed to the land component of the Subject Property is incorrect and should be higher.
24. The Taxpayer stated that based on his analysis of land sale prices the value of the land component of the Subject Property was \$46,000.
25. The Assessor stated that the last land study for the Thor's subdivision had been conducted in 2014 and that land values for all properties in Thor's Subdivision had not been changed since that time.
26. Both the Assessor and the Taxpayer stated that land values near the Subject Property have been increasing since 2014.
27. The Assessor stated, however, that upon reviewing land values in the Thor's Subdivision the land component of the Subject Property had not been valued using the same land study values as all other property in Thor's subdivision and had actually been valued higher than similarly situated properties. The Assessor indicated that the value of the land component of the Subject Property using the same land study values applied to the other properties in the Thor's subdivision would be \$24,825.
28. The Nebraska Supreme Court has held that "[t]axpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value."<sup>9</sup> This conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.<sup>10</sup>
29. The Commission finds that the equalized value of the land component of the Subject Property is \$24,825.
30. 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.
31. 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.

## ORDER

### IT IS ORDERED THAT:

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<sup>9</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>10</sup> *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

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	\$ 24,825
Improvements	\$227,410
Outbuildings:	\$100,470
Total	\$352,705

3. This Decision and Order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton 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 2017.
7. This Decision and Order is effective on November 28, 2018.

Signed and Sealed: November 28, 2018

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Steven A. Keetle, Commissioner