

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

Hilt Truck Line, Inc.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18C 0041

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a vacant commercial lot, with a legal description of: Lands Sec-Twp-Rng 05-15-10 Irreg W 301.6 E 397 S 700 N 733 FT N UPRR RWY NE1/4 NW1/4 4.2875 AC APPROX.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$275,400 for tax year 2018.
3. Thomas L. Hilt (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$155,700 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$275,400 for tax year 2018.
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 23, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Thomas L. Hilt was present at the hearing.
8. Keith Nielsen, County Appraiser, 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> 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 stated the Subject Property is a vacant lot with crushed rock used to park trailers. The Taxpayer asserted he needs to replace the rock every year and it is becoming costly to maintain. The Taxpayer stated he is unable to rent to Class A trailers as they would be too heavy to park on the Subject Property without having concrete. There is a junk yard adjacent to the Subject Property which lends to a rodent problem on the Subject Property.
17. The Taxpayer stated the property across the street at 25220 Fort Street is being valued at .31 per square foot compared to the Subject Property being valued at .55 per square foot. The County Appraiser asserted the property at 25220 Fort Street is much larger with a majority of the parcel not being used and is being valued differently to reflect the current use.
18. The County Appraiser stated the Subject Property was being valued with market data gathered by the Assessor’s office. The Appraiser stated he has reviewed the outside storage market as it is growing more popular. The Appraiser gathered information on

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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).

<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. County 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).

rents, expenses, vacancy rates and costs for outside storage areas; all the information gathered by the Appraiser was then used to build a model for the valuation of outside storage facilities. The Appraiser stated the Taxpayer's actual vacancy and collection losses are less than the County model and its actual expenses are lower than the County model.

19. The Taxpayer has not provided any property record files of sales showing a lower valuation and has not provided any evidence that his current valuation is incorrect.
20. 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.
21. 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Total \$275,400

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 2018.
7. This Decision and Order is effective on September 20, 2019.

Signed and Sealed: September 20, 2019

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James D. Kuhn, Commissioner