

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Valerie K. Christensen-Clements,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 18C 0079

Decision and Order Reversing  
County Board of Equalization

### Background

1. The Subject Property is a commercial building, with a legal description of: Lots 17 & 18 Block 2 Dakota First Addition.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$53,555 for tax year 2018.
3. Valerie K. Christensen-Clements (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$51,590 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 15, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Valerie K. Christensen-Clements and Amy Hech were present for the Taxpayer.
8. Joe Wilson, the 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>
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

<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).

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 increase in value of over \$40,000 in one year is in excess of the market value of the Subject Property.<sup>9</sup> The Taxpayer said they paid \$20,000 for the Subject Property in 2013 and have not made any improvements to warrant an increase in assessed value. The main floor of the Subject Property has a 625 square foot salon that is being rented with the remainder of the main floor being used as storage and a floral shop. Cooling and heating of the main floor is inadequate as the HVAC system is old and out of date. The Taxpayer stated the floors are original and have been neglected over the years.
17. The Taxpayer provided photos of the interior and exterior of the Subject Property that showed deterioration to the ceiling, floor and walls, predominantly on the second floor which is not being used as the windows are broken out and boarded over. The Taxpayer stated they are able to fix small problems as they arise but are not able to do a complete remodel as that would be too costly. The Taxpayer provided a photo of a large crack in the exterior wall that ran from the roof to the foundation and stated there are more like that.

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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).

<sup>9</sup> The Property Record Card for the Subject Property indicates that it was assessed at \$9,710 for tax years 2009 through 2017.

18. The Appraiser stated he has visited the Subject Property and discovered incorrect information in the Assessor's files. The Appraiser stated the Subject Property was incorrectly being valued as a barber shop. The Appraiser proposed making corrections to the Subject Property by valuing 625 square foot of barber shop, 3,375 square foot of retail, and correcting the second floor to warehouse storage. Adjustments were also proposed to the quality and condition of the Subject Property which would result in a lower assessed value of \$39,370.
19. The Taxpayer has adduced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
20. 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 and reversed.

## 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

<u>Total</u>	<u>\$39,370</u>
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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 2018.
7. This Decision and Order is effective on August 20, 2019.

Signed and Sealed: August 20, 2019

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James D. Kuhn, Commissioner