

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mark T. Thoene,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 18R 0096

Decision and Order Affirming  
County Board of Equalization

### Background

1. The Subject Property is a single family dwelling, with a legal description of: S200' of G.L. 7 in SE1/4 Subject to 33' wide easement for road purposes parallel to east line of said G.L. 7.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$124,865 for tax year 2018.
3. Mark Thoene (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$123,995 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 July 10, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mark T. Thoene was present at the hearing.
8. Jeff Curry, 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>
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

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<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 assessed value was in excess of market value due to the many repairs needed on the Subject Property. Photos of the Subject Property shown to the Commission highlighted some of the deferred maintenance.
17. The Taxpayer stated the window trim, the siding, and the front door needed to be replaced, and the chimney needed repairs. The Taxpayer estimated the cost of repairs would be \$20,000 to \$30,000.
18. The Assessor stated the Subject Property is in Neighborhood 28, which has higher land values than other neighborhoods. The Assessor acknowledged that the quality rating of the Subject Property may need a downward adjustment, but he could not provide a value for any such adjustment. The Assessor stated the Subject Property will be part of a neighborhood review in 2020.
19. The Taxpayer did not provide any property record files (PRF) of comparable properties or sales of comparable properties that would show the Assessor is incorrectly valuing this property. Although the Assessor acknowledged that the quality rating may need a downward adjustment, no quantification of how that would affect value was given.

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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).

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:

<u>Total</u>	<u>\$123,995</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 14, 2019.

Signed and Sealed: August 14, 2019

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James D. Kuhn, Commissioner