

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

Benno H. Cooper,  
Appellant,

v.

Dodge County Board of Equalization,  
Appellee.

Case No: 18R 0196

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is single family home, with a legal description of: Heavons S1/2 Lots 1 & 2 BLK 22.
2. The Dodge County Assessor (the County Assessor) assessed the Subject Property at \$133,315 for tax year 2018.
3. The Taxpayer protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$85,240 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$158,000 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 March 25, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Benno H. Cooper, the Taxpayer, was present at the hearing.
8. Brent Quandt, Deputy Dodge County Attorney, 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> See, 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 he overpaid for the property because he and his wife desired to reside in a smaller town close to both their jobs.
17. The Subject Property was built in 1902 and the Taxpayer stated the windows were original to the house and were in need of replacing. Other items in the house are repaired as needed, such as plumbing and furnace, but will need to be replaced in the future. The Taxpayer asserted the shed in the backyard is falling down; however, the Assessor stated he does not assess sheds so there is no value placed on the shed.
18. The Taxpayer provided four comparable properties that are in close proximity to the Subject Property that have sold within the last two years. All the comparable properties have a garage whereas the Subject Property does not. Sales prices varied from \$105,000 to \$140,000, not including the \$158,000 purchase price of the Subject Property. The Assessor provided three comparable properties, two of which were also provided by the Taxpayer. The four comparable properties provided by the Taxpayer tend to reveal a higher value than the Taxpayer requested in his valuation protest to the Board of Equalization.

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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).

19. The Assessor testified the value of the Subject Property was increased due to a reappraisal using new cost and depreciation tables. The Assessor stated his value of \$133,315 would be his recommendation as he also felt the Taxpayer may have overpaid for the property. The Assessor's opinion is the best evidence of the Subject Property's actual value produced at the hearing.
20. During the protest process, the County Board set the assessed value at the 2016 purchase price of \$158,000. Simply setting the value at the purchase price is not an accepted mass appraisal technique.
21. 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.
22. 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:

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:

Land	\$ 16,800
<u>Improvements</u>	<u>\$116,515</u>
Total	\$133,315

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 March 28, 2019.

Signed and Sealed: March 28, 2019

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James D. Kuhn, Commissioner