

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

Zygmunt E. Orlowski,  
Appellant,

v.

Stanton County Board of Equalization,  
Appellee.

Case No: 18R 0092

Decision and Order Affirming 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 one and one-half story finished residence, 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 \$402,380 for tax year 2018.
3. The Taxpayer protested this value to the Stanton County Board of Equalization (the County Board) and requested an assessed value of \$366,058 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$370,935 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 May 30, 2019, 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, the Stanton County 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

<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 alleged that the sales used by the county to determine land values were unreasonable because they were based on auction values. The Taxpayer did not offer any information to demonstrate the auction values of properties in Stanton County.
17. The County Assessor stated that auction values were not utilized when determining assessed land values in Stanton County.
18. The Taxpayer alleged that there was a difference in values between residential properties and farm home sites that was not considered by the county when determining the land value of the Subject Property.
19. The Taxpayer did not offer any information to demonstrate a difference in actual or assessed values for the land component of farm home sites to allow the Commission to analyze the Taxpayer’s allegation.
20. The Taxpayer alleged that the assessed land values had increased more than was reasonable from the 2014 assessed values based on real estate trends. The Taxpayer’s allegation is based on a percentage adjustment from the assessed value determined in 2014.

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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).

21. The Taxpayer did not present information to demonstrate that the basis of the 2014 assessed land value was more reliable than the information upon which the 2018 assessed land value was based.
22. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
23. The Taxpayer alleged that the conduct of the County Board hearing was improper and that the County Board considered unreasonable information obtained at the hearing. The information presented indicates that at least one County Board member knew and had spoken with the prior owner of the Subject Property and that the Taxpayer was asked about hail damage to the Subject Property at the hearing before the County Board.
24. The County Assessor presented the Property Record File (PRF) for the Subject Property, which indicates the basis of the assessed valuation of the Subject Property. The PRF contains a residential cost worksheet for the initial assessed value of the Subject Property as well as a residential cost worksheet for the value as determined by the County Board.
25. The PRF and the Property Valuation Form 422 indicate that the County Assessor recommended a different value for the Subject Property based on updated information about the characteristics of the Subject Property and increasing the depreciation applied to the improvements on the Subject Property. The notes indicate that this increased depreciation and resulting reduction in assessed value was based at least in part on accounting for hail damage to the Subject Property.
26. 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.
27. 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:

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<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

Land:	\$ 57,065
Improvements:	\$218,640
<u>Outbuildings:</u>	<u>\$ 95,230</u>
Total	\$370,935

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 (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 April 3, 2020.

Signed and Sealed: April 3, 2020

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Steven A. Keetle, Commissioner