

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

Cheema Investments,  
Appellant,

v.

Cheyenne County Board of Equalization,  
Appellee.

Case No: 19C 0052

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a commercial real property with improvements, with a legal description of: Lot 3A A Replat of Lots 1 & 3 Block 1 Chase Addition Sidney.
2. The Cheyenne County Assessor (the Assessor) assessed the Subject Property at \$253,200 for tax year 2019.
3. Cheema Investments LLC (the Taxpayer) protested this value to the Cheyenne County Board of Equalization (the County Board) and requested an assessed value of \$150,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$253,200 for tax year 2019.
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 30, 2020, at Hampton Inn & Suites Hotel, 301 W. Hwy 26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Kuldip Singh was present at the hearing for Cheema Investments LLC.
8. Paul Schaub (County Attorney) and Mel Keller (the Assessor) were 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 a 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 sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until

<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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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 recent construction of a Loves truck stop near the Subject Property has caused business at the Subject Property to decrease substantially to the point where the Taxpayer closed the business and listed it for sale.
17. The Taxpayer stated he purchased the Subject Property in 2014 or 2015 for \$100,000. The Taxpayer contends the purchase was an arms length transaction and not a foreclosure. The Taxpayer asserted he would sell the Subject Property for \$100,000 if someone wanted to purchase it.
18. The Taxpayer testified about seven comparable properties however he did not provide any property record files (PRF) for the Commission to analyze if they are truly comparable to the Subject Property.
19. The Assessor stated that economic depreciation is being applied to the Subject Property. The Assessor stated the condition of the Subject Property was considered when valuing it and ranking it as Average condition.
20. Underground storage tanks (USTs) for gasoline were added to the Subject Property in 2019. However, the USTs were installed after the effective assessment date of January 1, 2019. Additionally, the USTs are being assessed as personal property, and thus do not contribute to the assessed value of the Subject Property.

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<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 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.
22. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is \$253,200.
3. This Decision and Order, if no further action is taken, shall be certified to the Cheyenne County Treasurer and the Cheyenne 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 2019.
7. This Decision and Order is effective on February 19, 2021.

Signed and Sealed: February 19, 2021

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James D. Kuhn, Commissioner