

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

HILT TRUCK LINE INC.
APPELLANT,

CASE NO: 19C 0293

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property consists of a commercial parcel in Douglas County, parcel number 0106250012.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$122,400 for tax year 2019.
3. Hilt Truck Line Inc. (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$122,400 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 August 30, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Thomas L. Hilt was present at the hearing for the Taxpayer.
8. Keith Nielsen, with the County Assessor's office (the Appraiser) was present for the County Board.

II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."³ 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."⁴
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² 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, 759 N.W.2d 464, 473 (2009).

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

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a fenced lot used for outdoor storage, primarily for the parking of boats, campers, and trailers.
17. The County Assessor's office presented the Property Record File (PRF) for the Subject Property that shows it was valued by the Assessor using the income approach to valuation.
18. The Appraiser stated that he collected market information regarding outdoor storage throughout Douglas County. The county wide rental rates ranged from \$30-130 per parking spot for outdoor storage, with the typical rates being between \$40-\$60. Rental rates were different based on the characteristics of the properties. Based on this information and the characteristics of the facilities on the Subject Property the Appraiser made the determination that \$50 per parking spot represented market rates for the Subject Property.
19. The Appraiser stated that a 15% expense rate was typical for outdoor storage lots.
20. The Appraiser indicated that while there were waiting lists for most outdoor storage lots in the county and storage was a hot market, he utilized a 40% vacancy rate to account for the movement of renters into and out of a storage lot throughout the year.

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

21. The Appraiser further stated that a review of information provided in protests for subsequent tax years that he determined that the number of spaces on the Subject Property should be reduced from 40 to 28 and that based on this number of spaces his revised opinion of value for the Subject Property for tax year 2019 is \$85,700.
22. The Appraiser presented a spreadsheet of vacant land sales and PRF's of recently sold commercial properties near the Subject Property that supported the Appraisers revised opinion of value for the Subject Property.
23. The Taxpayer alleged that the actual rent collected from the Subject Property was lower than that used in the County's model and that the expenses for the property were much higher.
24. The Taxpayer presented a comparative profit and loss statement for the Subject Property. It is unclear which expenses on the statement are shared among multiple parcels or businesses. This statement does not show the rent rolls or vacancy rates for the Subject Property. The expense rate for the Subject Property shown by the statement is over 60%.⁹
25. The Taxpayer stated that he charges approximately \$36 per space for most spaces on the Subject Property and that only one space on the Subject Property rents for \$50.
26. The Taxpayer stated that the Subject Property did not have a waiting list and further that another property owned by the Taxpayer had an 87% vacancy rate, due in part to an additional 190 storage spaces being opened in nearby Valley, Nebraska over the last two years.
27. The Taxpayer alleged that the Subject Property has higher expenses due to a vermin problem related to an adjacent parcel that was used as a junk yard and a rock parking surface that requires annual replacement.

⁹ With Real Estate Taxes removed as an allowable expense to compare to the County Assessors expense rate discussed later. With the real estate taxes included as an expense this rate would be over 80%.

28. “Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts.”¹⁰
29. The Taxpayer presented no information regarding income, expenses, or vacancy rates to demonstrate that the amounts listed on the comparative profit and loss statement for the Subject Property were typical or stabilized for the market.
30. The information presented to the Commission has provided competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
31. The information presented to the Commission has provided clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

IV. 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 vacate and reversed.
2. The taxable value of the Subject Property for tax year 2019 is: **\$85,700.**
3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

¹⁰ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

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 January 20, 2023.

Signed and Sealed: January 20, 2023.



Steven A. Keetle, Commissioner