

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

Francisco's Bumper to Bumper Inc.,  
Appellant,

v.

Scotts Bluff County Board of Equalization,  
Appellee.

Case No: 20C 0170

**DECISION AND ORDER  
AFFIRMING THE DECISION OF THE  
SCOTTS BLUFF COUNTY BOARD OF  
EQUALIZATION**

Background

1. The Subject Property is a commercial parcel with a legal description of LT 9, BLK 6A, Panhandle Cooperative Sub Replat S-T-R 26-22-55.
2. The Scotts Bluff County Assessor assessed the Subject Property at \$1,087,889 for tax year 2020.
3. Francisco's Bumper to Bumper Inc. (the Taxpayer) protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$805,623 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$979,100 for tax year 2020.
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 September 20, 2021, at Hampton Inn & Suites, 301 US-26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Carl Francisco was present at the hearing for the Taxpayer.
8. Angela Dillman (the Assessor) and Kirk Fellhoelter (Deputy County Attorney) 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

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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 other similar properties are being valued less than the Subject Property. The Taxpayer provided property record files (PRF) for comparable properties and for comparable land values. The Taxpayer contends the comparable properties show that similarly situated properties are being valued at a lower price per square foot of improvement and land value. The Taxpayer stated the Subject Property is in a flood plain and a discount on the land should be given; however, no evidence was given to quantify how being in the flood plain adversely affected the value of the Subject Property. The Taxpayer stated the Subject Property was damaged by a hailstorm and did not receive any insurance money for the damage to the building.
17. The Taxpayer provided a CMA (commercial market analysis) by Cinda Munoz; a real estate broker, that compared the Subject Property to five comparable properties. The CMA gave an indicated value of \$875,000. Ms. Munoz stated in the CMA that the range of values for the Subject Property would be between \$805,000 and \$976,050. A CMA is not an appraisal and is not compliant with the Uniform Standards of Professional Appraisal Practices (USPAP), and Ms. Munoz is not a credentialed appraiser in the state

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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).

of Nebraska. No property record files (PRF) for the five comparables used in the CMA were provided to the Commission.

18. The Assessor stated the comparables used in the CMA were all from a different neighborhood than the Subject Property, with one of them being from a different city. The Assessor did not feel they were good comparables. The Assessor did a physical review of the Subject Property and made some minor adjustments to the PRF to account for the discrepancies.
19. The Assessor stated that about one acre in the rear of the Subject Property's land is in a flood plain, unlike one of the Taxpayer's comparable properties that is completely in a flood plain. The comparable that is completely in a flood plain is being valued differently than the Subject Property and the Assessor doesn't consider it a good comparable for land value. The PRF for the Subject Property shows that the flood plain acre is valued at a slightly lower rate than the other acres.
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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$249,354
<u>Improvements</u>	<u>\$729,746</u>
Total	\$979,100

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 2020.

7. This Decision and Order is effective on February 7, 2022.

Signed and Sealed: February 7, 2022

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James D. Kuhn, Commissioner