

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

Denise L. Wissing,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 20R 0331

**DECISION AND ORDER  
AFFIRMING THE DECISION OF THE  
HALL COUNTY BOARD OF  
EQUALIZATION**

Background

1. The Subject Property is an improved parcel with storage units with a legal description of Wood River Village Maccoll & Leflang's Add LTS 2-3 Blk 9.
2. The Hall County Assessor assessed the Subject Property at \$134,800 for tax year 2020.
3. Denise L. Wissing (the Taxpayer) protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$60,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$115,696 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 October 15, 2021 at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor before Commissioner James D. Kuhn.
7. Michael A. Wissing and Denise L. Wissing were present at the hearing for the Taxpayer.
8. Kristi Wold (the Assessor) and Darrel L. Stanard (the Appraiser) 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 the Subject Property is located on the south side of the railroad tracks in Wood River and properties on that side of town are not as desirable as property on the north side of the tracks. For this reason, the Taxpayer believes a location adjustment lowering the assessed value of the Subject Property should be applied.
17. The Taxpayer stated the south side of the tracks has gravel roads and open ditches. The Taxpayer asserted that access to the north side of the tracks, where the majority of stores and services are located, is difficult since Wood River built a new pedestrian bridge and took out the motor vehicle railroad crossing, causing a longer detour to access the north side of town.
18. The Taxpayer stated they purchased the Subject Property in 2015 for \$59,000 and the assessed value has doubled since then. The Taxpayer stated they have not raised rents for the storage units since the purchase.
19. The Assessor had the Appraiser do an income approach for the Subject Property with current vacancy, expenses and rents; the Appraiser recommended lowering the original assessment as a result of his research. His recommendation was adopted by the County Board during the Taxpayer’s protest.

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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).

20. The Assessor stated she has not seen a difference in sales prices from the south side of the tracks as compared to the north side of the tracks and agrees with at the Appraiser's recommended value.
21. The Taxpayer did not provide any evidence showing a difference in values from either side of the tracks that the Commission could analyze. Without property record files (PRF) of comparable properties showing a difference in value or other competent evidence that values on the south side of the tracks should be lower than values on the north side, the Commission must affirm the County Board's decision.
22. 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.
23. 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	\$ 14,000
<u>Improvements</u>	<u>\$101,696</u>
Total	\$115,696

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 December 29, 2021.

Signed and Sealed: December 29, 2021

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James D. Kuhn, Commissioner