

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

CLARENCE D. HERGERT  
APPELLANT,

CASE NO: 21C 0037

V.

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

SCOTTS BLUFF COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

**I. BACKGROUND**

1. The Subject Property is a vacant commercial parcel in Scotts Bluff County, parcel number 010361723.
2. The Scotts Bluff County Assessor (the County Assessor) assessed the Subject Property at \$154,533 for tax year 2021.
3. Clarence D. Hergert (the Taxpayer) protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$500 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$41,024 for tax year 2021.
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 28, 2022, at Hampton Inn & Suites Hotel, 301 W. Hwy 26, Scottsbluff,NE, before Commissioner James D. Kuhn.
7. Clarence D. Hergert was present at the hearing for the Taxpayer.
8. Kirk Fellhoelter (Deputy County Attorney) and Angela Dillman (the Assessor) 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.<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 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>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<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, 759 N.W.2d 464, 473 (2009).

<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.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer testified that he had purchased the Subject Property in the mid 1980's and it had never been assessed or had an assessed value until tax year 2020. The Taxpayer offered a Restricted Appraisal Report for the Subject Property that purports to comply with the Uniform Standards of Appraisal Practice for a Restricted Appraisal Report. The Restricted Appraisal Report for the Subject Property found a negative value for the parcel as a developable industrial parcel. The Taxpayer testified that the Subject Property had been used for dumping of various materials, both with and without his permission, over the years prior to the assessment date. The Taxpayer testified that he had reached an agreement with a third party to use the Subject Property for dumping materials that would later be leveled out by that third party to make it a buildable lot, that third party had gone bankrupt before the project could be completed, leaving various materials dumped on the parcel. A letter from M.C. Schaff & Associates Inc, an engineering firm, indicated that these materials had no value

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

<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

and would need to be removed and the site graded before the Subject Property could be developed. The Taxpayer testified that he did not know if the Subject Property had been contaminated by what had been dumped on the Subject Property over the years.

17. The Assessor recommended a lower assessment using an excess commercial land value since the Taxpayer owned adjoining property. The Assessor stated the Taxpayer could combine the properties however the Taxpayer does not want to have them combined in case the Subject Property has contaminated materials. The Assessor did not consider the restricted appraisal report since only a portion of the appraisal was provided and she did not have an opportunity to review the full appraisal.
18. The Taxpayer provided four pages of an appraisal report that did show an unimpaired value, however since the entire appraisal report was not provided, the Commission has no evidence of how the appraiser came to the \$132,700 unimpaired findings of value. The report did show a bid for material clean-up by Steve Schaneman at an approximate cost of \$287,000.
19. The Taxpayer stated he had an agreement with another party to dump material on the Subject Property for a fee, however the second party ended up going bankrupt.
20. The Commission is not convinced the partial appraisal report, with no evidence of how the values were calculated, is enough to rebut the presumption in favor of the County Board.
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.

#### 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 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$41,024
<u>Improvements</u>	<u>\$0</u>
Total	\$41,024

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 2021.
7. This Decision and Order is effective on January 10, 2023.

Signed and Sealed: January 10, 2023



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James D. Kuhn, Commissioner