

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

ANGELA K. DEFILIPPS  
APPELLANT,

CASE NO: 22R 0122

V.

GOSPER COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE GOSPER COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Property is an improved rural residential parcel in Gosper County, parcel number 370050320.
2. The Gosper County Assessor (the County Assessor) assessed the Subject Property at \$469,325 for tax year 2022.
3. Angela K. DeFilipps (the Taxpayer) protested this value to the Gosper County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$469,325 for tax year 2022.
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 December 8, 2023, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Angela K. DeFilipps was present at the hearing for the Taxpayer.
8. Pam Bogle (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>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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).

<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).

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 stated the percentage increase in value to the Subject Property is far higher than compared to the five comparable properties provided. The Taxpayer provided a spreadsheet showing the Subject Property increased 52% as compared to the comparable properties only increasing 8.9% to 10.43%.
17. The Assessor stated there was a revalue in 2022 with new costing tables being applied. The increase in value was not a flat percentage increase, rather a revalue that would most likely be different for every property.
18. The Taxpayer stated the Subject Property was bought for the views of the rural landscape but now has been overgrown with cedar trees that now block the views. The Taxpayer asserted the unpaved road that the Subject Property is on has a negative reflection on value. The Taxpayer stated a feedlot that has expanded and is 2.9 miles from the Subject Property emits odors that are apparent when conditions are favorable.
19. The Assessor stated in regard to the cedar trees blocking the vistas of the Taxpayer, that the Taxpayer still maintains all the rights of ownership and a preferred view is subjective. The Assessor stated her office could find no negative influences of unpaved roads to the value or sales prices of any parcels. As far

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<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).

as feedlot odors, the Assessor stated the Subject Property is a rural parcel and part of the agricultural district. No evidence was presented by the Taxpayer to quantify what effect the view, unpaved road, and feedlot odors had on the Subject Property.

20. The Taxpayer stated the Grabenstein property was the best comparable property to the Subject Property. The Grabenstein property was built in 2006 as compared to the Subject Property being built in 2005. The Grabenstein property has 2,633 square foot of living area as compared to the 1,980 square foot of living area in the Subject Property. When analyzing the Grabenstein property as compared to the Subject Property, we find a price per square foot of \$145.43 for the Grabenstein property and \$177.75 for the Subject Property. The major difference in the improvement values of the two properties is the fact the Subject Property has 1,040 square foot of basement finish whereas the Grabenstein property has no basement finish. The Subject Property also has a recently built 3,300 square foot equipment shed with a value of \$84,570, as compared to a slant wall building built in 1988 with a value of \$2,530 on the Grabenstein property.
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 2022 is affirmed.

2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 32,810
<u>Improvements</u>	<u>\$436,515</u>
Total	\$469,325

3. This Decision and Order, if no further action is taken, shall be certified to the Gosper County Treasurer and the Gosper 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 2022.
7. This Decision and Order is effective on March 15, 2024.

Signed and Sealed: March 15, 2024



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James D. Kuhn, Commissioner