

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

HUTTON HOMEOWNER  
ASSOCIATION  
APPELLANT,

V.

CASS COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NO: 22R 0204

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

**I. BACKGROUND**

1. The Subject Property is an improved residential parcel in Cass County, parcel number 130300845.
2. The Cass County Assessor (the County Assessor) assessed the Subject Property at \$63,292 for tax year 2022.
3. Hutton Homeowner Association (the Taxpayer) protested this value to the Cass County Board of Equalization (the County Board) and requested an assessed value of \$6,345 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$26,964 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 January 25, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Myron C. Graham was present at the hearing for the Taxpayer.

8. Teresa Salinger, Dana Long, and Tyler Kelly were 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 asserted that the increase in valuation is not appropriate because it is owned by the Homeowner's Association and cannot be sold.
17. The Taxpayer asserted that the 325% increase in evaluation was excessive.
18. The County Board presented evidence demonstrating an overall increase in the value of the land based on a reassessment of land values in the market area.
19. The County Assessor previously lowered the value of the Subject Property from \$63,292 to \$26,964 as the initial value was the result of a typographical error.
20. The County Board stated that the Subject Property was classified and assessed as excess land, which carries a lower valuation model than residential land
21. The Taxpayer did not present any evidence that demonstrates what impact, if any, the shared ownership of the property had on the value of the land.

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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).

22. The Taxpayer did not present any evidence that demonstrates that the classification or valuation method used by the County Assessor were incorrect.
23. The Taxpayer did not present any competent evidence of value to rebut the County Board's valuation of the Subject Property.
24. 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.
25. 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	\$ 24,696
<u>Improvements</u>	<u>\$ 2,268</u>
Total	\$ 26,964
3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 June 8, 2023.

Signed and Sealed: June 8, 2023



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James D. Kuhn, Commissioner