

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Debra J. Claussen,  
Appellant,

v.

Dodge County Board of Equalization,  
Appellee.

Case No: 13R 305

Decision and Order Affirming the  
Determination of the Dodge County Board  
of Equalization

### Procedural Background

1. The Subject Property (Subject Property) is a residential parcel with a partially completed house in rural Dodge County, Nebraska. The legal description of the parcel is found in the Case File.
2. The Dodge County Assessor (the Assessor) assessed the Subject Property at \$122,075 for tax year 2013.
3. The Taxpayer protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$56,700 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$96,350 for tax year 2013.
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 24, 2014, at a Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Debra J. Claussen was present at the hearing.
8. Tim Sopinski, Deputy Dodge County Attorney, and Kristen Chambers, appraiser for the Assessor were present for the Dodge County Board of Equalization (the County Board).

### Applicable Law

9. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>1</sup>
10. 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> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *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>2</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>3</sup>

11. 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>4</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>5</sup>
13. 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>6</sup>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>7</sup>

### **Findings of Fact & Conclusions of Law**

15. Debra Claussen did not dispute the assessment of the land component of the Subject Property at \$22,175.
16. Claussen asserted that the land was purchased in 1994 but the current improvements were not initially constructed until 2010. She suggested that the improvements were not complete even as of the date of the hearing.
17. Claussen agreed that that the assessed value of the improvement would be \$98,900 if 100% complete.<sup>8</sup> The Taxpayer did not dispute this determination.
18. Kristen Chambers, an appraiser for the Assessor, conducted an inspection of the parcel in June 2013 with Claussen. After the inspection, she filled out a percent completion form to determine the percent completion as of the effective date of January 1, 2013. Claussen asserted, and Chambers accepted the assertion, that the percentage of completion as of June, 2013 was substantially the same as the percentage completion as of January 1, 2013.
19. Chambers, on behalf of the Assessor, determined that the percentage completion was 75% as of January 1, 2013.

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<sup>2</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>3</sup> *Id.*

<sup>4</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>5</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>6</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>7</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>8</sup> This improvement value is \$1,000 less than the Assessor’s initial determination but is consistent with the County Board’s final determination and the information presented in the present hearing.

20. Claussen gave her opinion that as of January 1, 2013, the percentage completion was 60%. Other than her opinion, Claussen provided no competent evidence to dispute the County Board's determination of value based upon a percentage completion of 75%.
21. In an appeal "the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion...."<sup>9</sup>
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. Clear and convincing evidence was not adduced that the determination of the County Board is unreasonable or arbitrary, and the decision of the County Board should be affirmed.

**ORDER**

IT IS ORDERED THAT:

1. The Decision of the Dodge County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

|              |                  |
|--------------|------------------|
| Land         | \$ 22,175        |
| Improvements | <u>\$ 74,175</u> |
| Total        | \$ 96,350        |
3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
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 2013.
7. This Decision and Order is effective on July 25, 2014.

Signed and Sealed: July 25, 2014

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Robert W. Hotz, Commissioner

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<sup>9</sup> *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).