

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

Traudt Enterprises, Inc.,  
Appellant,

v.

Clay County Board of Equalization,  
Appellee.

Case No: 16A 0055

Decision and Order Affirming the Clay  
County Board of Equalization

Background

1. The Subject Property is 4.9 acre parcel improved with a 31,645 square foot hog finishing building, office, hoppers, and other miscellaneous improvements with a legal description of: Pt NE ¼ NE ¼ of Section 27, Township 7 Range 7 of Clay County, Nebraska.
2. The Clay County Assessor (the County Assessor) assessed the Subject Property at \$853,315 for tax year 2016.
3. The Taxpayer protested this value to the Clay County Board of Equalization (the County Board) and requested an assessed value of \$624,410 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$853,315 for tax year 2016.
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 June 19, 2017, at the Holiday Inn Express, 508 2<sup>nd</sup> Avenue South, Kearney, Nebraska, before Commissioner Steven A. Keetle.
7. Walter D. Traudt was present at the hearing for Traudt Enterprises, Inc. (Taxpayer).
8. Ted S. Griess, Clay County Attorney was 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 the 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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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>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 alleged that the Subject Property is over assessed for the reason that a “nearly identical” property located in Polk County (the Polk Property) is assessed at a substantially lower amount than the Subject Property. The assessed value of the Subject Property was \$853,315 while the Polk Property was assessed at \$616,350 for tax year 2016
17. The Subject Property is the second of two facilities in Nebraska contracted through Maschhoff’s and used for hog production, the Polk Property being the first such facility.
18. The Taxpayer indicated that the approximate cost of the facility was \$1.2 million. That cost included approximately \$200,000 of personal property, \$115,000 for site preparation and \$10,000 for state permits, making the total cost of the building and other real property improvements approximately \$875,000. The Taxpayer did not know the cost of the Polk Property but believed they must be similar as the properties were similar and constructed one year apart.
19. The Subject Property and the Polk property both have hog finishing buildings of approximately the same size, and both properties have four similar hoppers located near these buildings.

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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) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<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. 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>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

20. The Subject Property and the Polk property both have offices but the Subject Property has a hallway attaching the office to the hog finishing building and has the showers etc. for farm biosecurity contained in this portion of the buildings.
21. The Subject Property also has a porch/awning and cupola which the Taxpayer added to make the building more visually appealing from the outside that the Polk Property doesn't have.
22. The Polk property was constructed in 2014 while the Subject Property was constructed in 2015.
23. The Subject Property is located on the corner of Highway 14 and Road 316, while the Polk property is located on a dead end road off of a highway.
24. Darrel Stanard, an appraiser for the County Assessor's Office (the Appraiser), discussed how the County Assessor's Office assessed the Subject Property.
25. Clay County utilized the MIPS Computer Assisted Mass Appraisal (CAMA) system and the 2011 costing from the Marshal and Swift valuation service to assess property for the 2016 tax year.
26. Polk County utilizes the Terra Scan CAMA system to assess property but the costing utilized was not presented to the Commission.
27. The Property Record File (PRF) for the Subject property breaks down how the County Assessor determined the assessed value for the Subject Property for tax year 2016, indicating the land value, building value, outbuilding value, depreciation, etc.
28. The Appraiser stated that for tax year 2016 the County Assessor did not apply economic depreciation to property in Clay County and that there was not any physical depreciation applied to the Subject Property because it was brand new, having just been built in 2015.
29. The PRF for the Polk property was not presented at the hearing and the Commission is therefore unable to determine the factors used by Polk County as the basis to determine the assessed value of the Polk Property other than the total land and improvement values.
30. 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.
31. 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 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year is:

Land	\$ 8,060
<u>Improvements</u>	<u>\$845,255</u>
Total	\$853,315

3. This Decision and Order, if no further action is taken, shall be certified to the Clay County Treasurer and the Clay County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective on October 13, 2017.

Signed and Sealed: October 13, 2017

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Steven A. Keetle, Commissioner