

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

David N. Smith,  
Appellant,

v.

Scotts Bluff County Board of Equalization,  
Appellee.

Case No: 18C 0020

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a commercial property with mini storage units, with a legal description of: Blk 2, Crown West Apartments Add Amended S-T-R 22-22-55.
2. The Scotts Bluff County Assessor (the Assessor) assessed the Subject Property at \$547,180 for tax year 2018.
3. David N. Smith (the Taxpayer) protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$291,129 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$547,180 for tax year 2018.
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 September 11, 2019, at the Hampton Inn & Suites North Platte, 200 Platte Oasis Parkway, North Platte Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Jessica M. Laughlin, Deputy County Attorney, and Angela Dillman, Deputy County Assessor, were 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>

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<sup>1</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<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 (2009).

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>
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 Subject Property is currently being valued in neighborhood 1020, which is within the city limits. The Taxpayer asserted that the Subject Property should be in a neighborhood called 1010 that contains properties in the “Industrial and Outskirts” of town. He further stated that storage units are usually located on the cheapest land, which tends to be on the outskirts of town. The Taxpayer asserted the Subject Property is in close proximity to low income housing, a natural gas supplier, and deteriorating industrial type buildings, lending to his assertion that the Subject Property is more closely located to the industrial area. According to the Taxpayer, a majority of storage units in the Scottsbluff city limits are in the 1010 neighborhood, which has lower land valuations than the Subject Property.
17. The Assessor provided an aerial map outlining the properties in the 1020 neighborhood and described the boundaries for the neighborhood. The map shows that the Subject Property is in close proximity to other commercial buildings within the 1020 neighborhood. The Assessor stated all the land values were set using sales of commercial properties.

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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).

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

<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, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

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

18. The Taxpayer asserted that his improvement value was in excess of comparable property values. The Taxpayer provided two comparable storage unit properties that he claims show a lower price per square foot than the Subject Property even though they are nearly identical in construction. The Assessor stated the two comparable properties are not located in the same neighborhood as the Subject Property and one of the comparable properties is in a different town. The Assessor stated those storage units would have different valuations due to their locations.
19. The Assessor provided a spreadsheet with a list of storage units and the neighborhoods they are being valued in. The storage units are being valued uniformly with adjustments for miscellaneous items such as concrete, parking lot lights, canopies, etc. The Assessor also adjusts for features such as mezzanines or sprinkler systems.
20. The Commission has not been convinced that the value set by the County Board is incorrect. The comparable properties provided were not in the same neighborhood and the Taxpayer presented no evidence to show that the Subject Property was being valued differently than storage units in the same neighborhood.
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.

## 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Total \$547,180

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 2018.

7. This Decision and Order is effective on September 30, 2019.

Signed and Sealed: September 30, 2019

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James D. Kuhn, Commissioner