

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

Hilt Truck Line, Inc.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18C 0040

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a mini storage warehouse, with a legal description of: Lands 25-16-09 Irreg 2.35 Acre Parcel as Desc QCD 2160/120 SW1/4 SE1/4.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$115,200 for tax year 2018.
3. Thomas L. Hilt (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$115,200 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 August 23, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Thomas L. Hilt was present at the hearing.
8. Keith Nielsen, County Appraiser, 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 sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until

<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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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 contends the Subject Property does not fit the County model for mini storage units. The Subject Property consists of twenty units; all are 10x20 feet in dimension and have seven foot tall doors. The Taxpayer stated the 10x20 units are the least popular size to potential renters and only have seven foot tall doors as compared to the eight foot doors of most other mini storage units. The Taxpayer asserted the Subject Property has no utilities, no onsite manager, and no concrete pads as the Subject Property is all gravel. The Taxpayer stated he is receiving \$3 per square foot for rent yet the County is assessing him at \$4 per square foot.
17. The Taxpayer asserted the location of the Subject Property in Valley, Nebraska is also a factor in the valuation of the property. Valley is a small town with limited potential clients for mini storage units. The Taxpayer contends the size, shape, and being located in a flood zone should also lead to a lower valuation. The Taxpayer asserted there has been a 69% increase in competition with some competitors offering incentives to their clients that the Taxpayer cannot offer.
18. The Taxpayer provided seven land valuation comparables but did not provide complete property record files. The County Appraiser stated some of the comparable properties were in different market areas with different land value tables or were being valued by

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<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).

the acre. Without the complete property record files, the Commission cannot determine if the comparable properties provided by the Taxpayer are actually comparable.

19. The County Appraiser testified he has done extensive research into the mini storage warehouse market as it is growing at such a rapid rate. The Appraiser has gathered rental, expense, vacancy and cost information from owners and managers of mini storage warehouses and compiled that information into the County model for valuing mini storage warehouses. This model is used to value all mini storage warehouses in the county.
20. The Commission has not been convinced the current assessment is incorrect. Without evidence of sales of similar properties showing a lower value or evidence that other mini storage warehouses are being valued differently than the Subject Property, the Commission must rule in favor of the County.
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:

<u>Total</u>	<u>\$115,200</u>
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3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 20, 2019.

Signed and Sealed: September 20, 2019

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James D. Kuhn, Commissioner