

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

Molliann F. Heikes,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 18C 0047

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is single family residence within a larger metal storage building, with a legal description of: A Tract in SW1/4 SE1/4 Beginning at NW Corner of Said Quarter Section.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$363,835 for tax year 2018.
3. Molliann F. Heikes (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$363,835 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 July 11, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Jeff Curry, the Assessor, and Joe Wilson (the Appraiser) 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 Property Record Card (PRC) provided by the County Board shows that the assessed value of the Subject Property increased from \$170,100 in 2017 to \$363,835 in 2018. Most of this increase in valuation was due to the value of the land component of the Subject Property being increased from \$15,515 to \$200,000.
17. The Taxpayer contends the 2018 valuation is out of line compared to the 2017 assessment. No improvements have been made to the Subject Property to warrant such a large increase in value. The Taxpayer asserted the property might be able to sell for the assessed amount if sold for a commercial purpose however she has no intention of selling the Subject Property as long as she is physically able to live there.
18. The Taxpayer stated the Subject Property is just an 80x120 Strand steel building with an approximate 30x40 two story living quarters built inside with the balance of the building being used for storage. The original purpose of the building was in part for residence and to facilitate the washing, sorting and bagging of the potatoes grown on the Subject Property.

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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).

19. The Assessor contracted Joe Wilson of Tax Valuation Inc. to review commercial property in Dakota County for 2018. During the review, it was revealed the Subject Property was a commercial property but has been incorrectly valued as residential for the past ten to seventeen years. Once this error was corrected on the Subject Property, the land value was equalized with commercial land values in the area.
20. Despite the Taxpayer's decision to build a residence within the metal building, the highest and best use of the Subject Property is commercial, not residential. The classification of the Subject Property as a commercial parcel is correct.
21. The Taxpayer has not produced any property record files of comparable properties to show the values assessed are incorrect.
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. 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:

Land	\$200,000
<u>Improvements</u>	<u>\$163,835</u>
Total	\$363,835

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 August 5, 2019.

Signed and Sealed: August 5, 2019

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James D. Kuhn, Commissioner