

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

Allen J. Niedbalski,  
Appellant,

v.

Platte County Board of Equalization,  
Appellee.

Case No: 15R 0084

Decision and Order Affirming Platte  
County Board of Equalization

**Background**

1. The Subject Property is a residential parcel improved with a split level dwelling. The legal description is: Lot 4, Blk B, Laska 1<sup>st</sup>, Columbus, Platte County, Nebraska.
2. The Platte County Assessor (the County Assessor) assessed the Subject Property at \$184,315 for tax year 2015.
3. The Taxpayer protested this value to the Platte County Board of Equalization (the County Board) and requested an assessed value of \$171,075 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$185,085 for tax year 2015.
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 30, 2016, at the Rivers Edge Convention Center, 265 33rd Ave. Columbus, NE, before Commissioner Nancy J. Salmon.
7. Allen J. Niedbalski was present at the hearing for (Taxpayer).
8. Elizabeth Lay, Deputy Platte County Attorney, was present for the County Board.
9. Tom Placzek was present as the Platte County Assessor.

**Applicable Law**

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
12. 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) (2014 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>

13. 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>
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
15. 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>
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

17. The Taxpayer asserted that the Subject Property was overvalued because the value increased \$24,000 over the previous year’s valuation.
18. The prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>9</sup> Therefore, this assertion alone is insufficient to rebut the presumption in favor of the County Board.
19. The Taxpayer also asserted that the Subject Property was overvalued based on the assessment of its deck and siding.
20. The Taxpayer stated the plywood siding was replaced with cement fiber board siding at a cost of less than the old siding. He also stated the old redwood deck was removed and replaced with a synthetic deck. He alleged that the value of the deck was overstated by the County Board because it was listed as “Trex” on the property record card.
21. The Taxpayer asserted that he had consulted with a realtor and his opinion of market value for January 1, 2015 was between \$175,000 and \$180,000. However, this realtor was not present at the hearing to explain his opinion of value.

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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(8) (2014 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) (2014 Cum. Supp.).

<sup>9</sup> *DeVore v. Db. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

22. The County Assessor stated that, with respect to the deck being labeled “Trex,” all synthetic decks were priced the same in the County’s Computer Assisted Mass Appraisal (CAMA) system.
23. The County Assessor also provided the Commission with 3 comparable properties that supported the County Board’s valuation.
24. Ultimately, the Taxpayer failed to provide sufficient evidence to rebut the presumption in favor of the County Board.
25. 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.
26. 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 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$24,575
<u>Improvements</u>	<u>\$160,510</u>
Total	\$185,085

3. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2015.
7. This Decision and Order is effective on July 8, 2016.

Signed and Sealed: July 8, 2016

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Nancy J. Salmon, Commissioner