

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ann M. Payne,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 17R 0221

Decision and Order Reversing  
County Board of Equalization

### Background

1. The Subject Property is single family dwelling, with a legal description of: O T RV Lt 4 Blk 23 S-T-R 09-12-14
2. The Buffalo County Assessor (the Assessor) assessed the Subject Property at \$38,470 for tax year 2017.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$20,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$30,170 for tax year 2017.
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 November 19, 2018 at 3 pm, at the Law Enforcement Center, 111 Public Safety Drive, 2<sup>nd</sup> Floor Community Room, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Ann M. Payne was present at the hearing.
8. Andrew W. Hoffmeister, Deputy County Attorney, and Ethel Skinner, the 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>
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

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<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 feels the assessment of the Subject Property is much higher than comparable properties in Ravenna. She asserted that her property is the smallest in square footage compared to similar properties and assessed at a much higher value. Seven comparable property record files were provided showing similar properties ranging in square footage from 736 square foot to 1,240 square foot and all of them having a lower price per square foot than the Subject Property.
17. Both parties agreed the current economy in Ravenna is down due to large employers closing businesses and laying off employees. The Assessor stated she would need to do a review of Ravenna soon.
18. When looking at the comparables provided by the Taxpayer, the price per square foot of the comparable properties ranges from \$17.77 to \$31.12, whereas the Subject Property has a per square foot value of \$38.14. After arraying the data, the median price per square foot of all the comparables is \$19.69. When multiplying the median price per square foot by the square foot of the Subject Property, the implicated improvement value would be \$12,998 (rounded to \$13,000).

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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.).

19. The County Board lowered all land values to \$5,000 for anyone who protested from the city of Ravenna, but did not lower the land values of taxpayers who did not protest. For a county board to lower land values of only the people who protested their valuation while not adjusting the values of all other properties is arbitrary and unreasonable.  
Disequalization of land values in Ravenna is the result of the County Board's actions.
20. The lot value of the Subject Property was \$11,900 prior to the County Board lowering it to \$5,000. The lot value will be set at the valuation set by the Assessor for 2017.
21. The Taxpayer has 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 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 vacated.

## 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 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$11,900
<u>Improvements</u>	<u>\$13,000</u>
Total	\$24,900
3. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo 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 2017.
7. This Decision and Order is effective on December 11, 2018.

Signed and Sealed: December 11, 2018

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James D. Kuhn, Commissioner