

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ann M. Sucha,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 17R 0243

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a two story single family home, with a legal description of: Super M Farms Administrative Sub Lot 1 (3.2 AC) 32-11-15 PT S1/2 SW1.4 Acres: 0.130.
2. The Buffalo County Assessor (the Assessor) assessed the Subject Property at \$150,195 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 \$82,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$150,195 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 20, 2018, at the Law Enforcement Center, 111 Public Safety Drive, 2nd Floor Community Room, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Paul A. Sucha was present at the hearing for the Taxpayer.
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 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²
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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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.”³ 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.”⁴

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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer stated the house is 105 years old with a couple of buildings deemed to have no value by the mortgage company. The Taxpayer feels the increase in value is excessive.⁹
17. The Taxpayer met with the referee for the County Board and was told the value should be closer to \$80,000; however, when the new notice of value was received, there was no change in value.
18. The Assessor explained the increase in value was due to the property having its condition raised to Good. In the course of the hearing, the Assessor agreed to visit the property to ensure all the information in the Property Record Card (PRC) was correct. After visiting the Subject Property, the Assessor changed the Condition to Badly Worn and the Quality to Average. Application of these changes would lower the assessment to \$129,000 and the Assessor would recommend lowering the assessment to that value.¹⁰

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

⁹ Documents provided at the hearing showed that the assessed value of the Subject Property for tax year 2016 was \$80,000. The total increase from 2016 to 2017 was \$70,195 (88%), attributable entirely to the value of buildings.

¹⁰ The parties agreed to this inspection and the submission of additional information to the Commission in the course of the hearing.

19. The evidence provided to the Commission demonstrates that the current assessment is incorrect and unreasonable. However, the Taxpayer did not provide PRCs for comparable properties or other evidence to support the requested valuation of \$80,000. The Assessor's re-evaluation constitutes evidence that the correct value for tax year 2017 is \$129,000.
20. 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.
21. The Taxpayer has 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	\$ 22,400
<u>Improvements</u>	<u>\$106,600</u>
Total	\$129,000

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

James D. Kuhn, Commissioner