

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Elaine B. Wiseman,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 18A 0017

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is agricultural parcel consisting of pipe irrigated cropland and grass land, with a legal description of: Lots 1 & 2 and part of Lots 6 & 7 in Section 4, Township 8 North Range 14 West of the 6th P.M. Buffalo County, NE 43255 Coal Chute Road, Gibbon NE 68840.
2. The Buffalo County Assessor (the Assessor) assessed the Subject Property at \$704,585 for tax year 2018.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$361,773 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$705,585 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 November 19, 2018, at the Law Enforcement Center, 111 Public Safety Drive, 2nd Floor Community Room, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Elaine B. Wiseman 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 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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).

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.”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 Subject Property is in an area between Coal Chute Road and Interstate 80 that has poor soil types and low production according to the Taxpayer and should not be compared to sales of properties in better areas of Buffalo County. The Taxpayer contends that due to the proximity of the Subject Property to Interstate 80, the Subject Property has poor water drainage and lower parts of the field are susceptible to flooding.
17. The Taxpayer purchased the Subject Property at auction for \$469,030 on November 28, 2017. The Taxpayer feels the purchase price is a better reflection of what the market value of the Subject Property should be considering it was purchased at a public auction. An exhibit provided by the Taxpayer from Marshall Land Brokers & Auctioneers states in part “The auction was very well attended with numerous bidders. This sale represents a true arm’s length transaction.”
18. The Assessor disagrees with the contention the sale is an arm’s length sale as the Taxpayers were part owners of the parcel prior to the sale and the sale will be disqualified

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

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. 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).

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

as a family sale. The Assessor further contends that only two people were bidding on the Subject Property during the auction.

19. The Assessor stated that the Subject Property was being valued by LVG (Land Valuation Grouping) code and the same value was being used for like LVG codes in each market area. The Assessor did concede that she was going to do a study of the area between Coal Chute Road and Interstate 80 in 2019 to see if there may be some influence on land values in that area that could be affecting not only the Subject Property but adjoining parcels as well.
20. Three sales of agricultural land were provided by the Taxpayer, however the composition of those soil types were mostly superior to the Subject Property soil types and do not appear to the Commission to be truly comparable properties. All the comparable properties were smaller than the Subject Property, two of which were over 80 acres smaller.
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:

Land	\$705,585
<u>Improvements</u>	<u>\$ 0</u>
Total	\$705,585

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 2018.
7. This Decision and Order is effective on December 11, 2018.

Signed and Sealed: December 11, 2018

James D. Kuhn, Commissioner