

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

Jeremy R. Armagost,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case Nos: 18C 0034 & 18C 0035

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Properties are a professional office suite condo and storage garage, with legal descriptions of: East 52<sup>nd</sup> Street Condominiums Unit A as located on Lot 1 except the 125' Blk 2 Skiview Add (PID 605179496) and East 52<sup>nd</sup> Street Condominiums Unit C (PID 605179498).
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Properties at \$339,360 (PID 605179496) and \$160,670 (PID 605179498) for tax year 2018.
3. Jeremy R. Armagost (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$291,360 for PID 605179496 and \$66,670 for PID 605179498 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$334,905 for PID 605179496 and \$160,670 for PID 605179498 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 April 5, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2<sup>nd</sup> Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer, Jeremy R. Armagost was present at the hearing.
8. Andrew W. Hoffmeister, Deputy County Attorney (County Attorney) and Nora Borer, Deputy County Assessor (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>

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<sup>1</sup> See, 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

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 Taxpayer owns half of a professional condominium known as Unit A and a storage garage know as Unit C. The Taxpayer feels the land value is in excess of actual value. He provided a spreadsheet of unknown origins showing lot values of condominium properties in North Kearney. All the properties have the exact same value, but the Taxpayer stated he doesn’t agree all the condominium lots should be valued the same because not all the lots are the same size. He feels there should be a value decrease as the lot size decreases. The Assessor stated all the condominium lots are equalized because they are all assessed at the same value.
17. The Taxpayer asserted his storage garage (Unit C) is well above fair market value due to the land value assessed to the property. The Assessor stated again that all condominium lot values are the same.

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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).

<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).

18. The Taxpayer stated he was assured by the Buffalo County referee that the value of Unit C would be “taken care of,” but there was no change in value to this parcel. The ultimate decision about the value of the property is made by the County Board, not the referee.<sup>9</sup>
19. No comparable sales or comparable property record files were provided by the Taxpayer showing the assessment to be incorrect.<sup>10</sup> No action can be taken on these appeals without any evidence showing the County Board was arbitrary or unreasonable in its decision.
20. 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.
21. 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 Properties for tax year 2018 is:

**PID 605179496**

Land	\$130,000
<u>Improvements</u>	<u>\$204,905</u>
Total	\$334,905

**PID 605179498**

Land	\$130,000
<u>Improvements</u>	<u>\$ 30,670</u>
Total	\$160,670

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 (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.

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<sup>9</sup> I note, however, that several Buffalo County taxpayers have reported similar statements by referees in hearings related to tax year 2018.

<sup>10</sup> Paragraph 8 of the Commission’s Order for Single Commissioner Hearing and Notice clearly states that copies of the County’s property record file should be provided to the Commission for any parcel a party intends to present as a comparable parcel.

6. This Decision and Order shall only be applicable to tax year 2018.
7. This Decision and Order is effective on April 10, 2019.

Signed and Sealed: April 10, 2019

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James D. Kuhn, Commissioner