

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Beverly M. Anderson,
Appellant,

v.

Hamilton County Board of Equalization,
Appellee.

Case No: 18R 0004

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Lot 9 Exc So 8' Park View Add 1 Lot.
2. The Hamilton County Assessor (County Assessor) assessed the Subject Property at \$68,240 for tax year 2018.
3. Beverly Anderson (the Taxpayer) protested this value to the Hamilton County Board of Equalization (the County Board) and requested an assessed value of \$56,925 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$68,240 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 3, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Beverly M. Anderson was present at the hearing.
8. Michael H. Powell, Hamilton County Attorney, and Pat Sandberg, the County 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 Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

² 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 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 contends land values south of the railroad tracks were raised to \$2 per square foot whereas land values north of the railroad tracks are lower than \$2 per square foot. Several partial property record files containing only the front page were provided by the Taxpayer; however, these are not full property record files. Determining comparability without the full property record files is impossible.
17. The County Assessor provided documentation showing a market area for land values that was south of highway 34 to an area near the south edge of Aurora and starting on the west edge of Aurora on 1st street going east to McCullough Street. All of the residential land values in this area are being valued in the same manner: \$2 per square foot for the first 20,000 square feet, with the remainder of the land valued at \$1 per square foot.
18. The Taxpayer stated that the area near the Subject Property has had a couple homes sell “on the courthouse steps” for \$25,000 and \$26,000. She feels these sales should be considered when assessing the Subject Property. The Taxpayer also stated the following reasons the Subject Property is in a less than desirable part of Aurora: no sidewalks, close proximity to a coop anhydrous storage area, view of the coop elevator and lying one

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) (Reissue 2018).

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) (Reissue 2018).

block from the railroad tracks. Photos were provided by the Taxpayer showing the neighborhood.

19. The County Assessor provided a sales map of the Subject Property's neighborhood and highlighted eight sales between October 1, 2015 and December 31, 2018 that she felt were comparable. The County Assessor stated the purchase prices in the neighborhood continue to rise, thus resulting in a valuation increase for 2018.
20. The County Assessor noted her office found a clerical error for the Subject Property after the original notice of value was mailed. On July 31, 2018, the Assessor mailed the Taxpayer a Notice of Valuation Change. The original notice of value showed \$68,240, after correcting the clerical error, the second notice of value showed \$57,910. The Assessor advised the Commission that the correct taxable value of the Subject Property as of January 1, 2018, was \$57,910.
21. Nebraska law specifically prohibits county assessors from changing the current year's assessed valuation of any real property after March 19, except by action of the Commission or the county board of equalization.⁹ The County Assessor's action in sending a second Notice of Valuation Change on July 31 may not have complied with this requirement.¹⁰
22. Even if the second change of value was not made according to statute, the County Assessor's statement that the correct value of the Subject Property was \$57,910 constitutes clear and convincing evidence to support a change of valuation.
23. 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.
24. 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 2018, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$18,860
<u>Improvements</u>	<u>\$39,050</u>
Total	\$57,910

⁹ Neb. Rev. Stat. §77-1315.01 (Reissue 2018). The deadline is March 25 for counties with at least 150,000 inhabitants.

¹⁰ The County Board was represented at the hearing by the County Attorney, who raised no objection to the procedure used by the County Assessor.

3. This Decision and Order, if no further action is taken, shall be certified to the Hamilton County Treasurer and the Hamilton 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.
6. This Decision and Order shall only be applicable to tax year 2018.
7. This Decision and Order is effective on April 16, 2019.

Signed and Sealed: April 16, 2019

James D. Kuhn, Commissioner