

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Pearl L. Young Sklenar,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 18R 0013

Decision and Order Reversing  
County Board of Equalization

### Background

1. The Subject Property is a single family dwelling, with a legal description of: O T RV W 84' of Lts 7 & 8 Blk 19.
2. The Buffalo County Assessor (the Assessor) assessed the Subject Property at \$84,650 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 \$50,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$84,650 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 21, 2018, 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. Pearl L. Young Sklenar 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 stated she had tried to sell the Subject Property for \$79,000 and received no offers. She said the Assessor was valuing the Subject Property as a stick built home when in fact it is a modular home. When asked by the Assessor if the home had a steel frame underneath of it, the Taxpayer said it did still have the steel frame.
17. The Subject Property was purchased from the Taxpayer’s mother and is now being used as a rental with a monthly rent of \$300.
18. The Assessor was unaware of the home being a modular home. Following the hearing, the Assessor visited the Subject Property and, based on further inspection, recommended a value of \$50,000 for tax year 2018.
19. No property record files were provided by the Taxpayer to assist the Commission in determining whether the Subject Property was properly equalized with comparable properties; however, the Assessor’s recommendation to lower the assessment after visiting the Subject Property is competent evidence that the Subject Property was overvalued and the correct value should be \$50,000 for tax year 2018.
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.

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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).

<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. 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) (2016 Cum. Supp.).

21. 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	\$13,160
<u>Improvements</u>	<u>\$36,840</u>
Total	\$50,000

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 2018.
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