

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

Brent Frerichs,  
Appellant,

v.

Hamilton County Board of Equalization,  
Appellee.

Case No: 18R 0003

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a single family dwelling, with a legal description of: 6 10 8 Lot 11 Platte View Est Sub 1.07 AC
2. The Hamilton County Assessor (the County Assessor) assessed the Subject Property at \$392,025 for tax year 2018.
3. Brent Frerichs (the Taxpayer) protested this value to the Hamilton County Board of Equalization (the County Board) and requested an assessed value of \$337,025 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$352,025 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, 2<sup>nd</sup> Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Brent Frerichs was present at the hearing.
8. Michael H. Powell, Hamilton County Attorney, and Patricia Sandberg (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> 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 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.”<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’s biggest contention is with the land value of the Subject Property. He stated that he paid \$33,000 for the vacant lot and feels the increase to the land value is in excess of market value. The Board lowered his lot value from \$125,000 to \$85,000 during the protest period, but he feels he could not sell his lot for \$85,000 if it were empty.
17. The Taxpayer offered a map and property data sheets showing the subdivision and highlighted two vacant lot sales, selling for \$42,000 and \$55,000 respectively. He stated that the vacant lot sales show the land value is not worth nearly the assessment placed on the Subject Property. The Taxpayer asserted lots with greenspace or walk-out basements should be valued higher than lots with streets behind them.
18. The Assessor stated the land values were increased due to high sale prices of improved properties. Since the CAMA system could not value the improvements high enough to keep pace with the high sales prices, lot values were raised to assess properties within the statutory limits. She also stated part of the land value increase was to account for the

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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) (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).

well, septic system and other infrastructure needed to build a home. Contribution would be the appraisal term used to describe the value of particular components of a property that adds to the total value of the property even though it may not be equivalent to the cost to add the component.

19. The Assessor has lowered all the improved lots in the Subject Property's subdivision under 1.45 acres to \$85,000. It appears all properties are being equalized.
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 Property for tax year 2018 is:

Land	\$ 85,000
<u>Improvements</u>	<u>\$267,025</u>
Total	\$352,025

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 24, 2019.

Signed and Sealed: April 24, 2019

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James D. Kuhn, Commissioner