

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Linda J. Schroeder,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case Nos: 18R 0008 & 18R 0009

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Properties are a multifamily duplex with legal description of P&H Add KY Lts 16, 17 & 18 Blk 45 (18R 0008), and a single family condominium with a legal description of Lighthouse Point Condo Unit C & 1/6th of Common Lt G on Pt Lt 19 & All Lts 20-21-22 Blk 1 Lighthouse PT Add (18R 0009).
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Properties at \$368,020 (18R 0008) and \$334,525 (18R 0009) for tax year 2018.
3. Linda J. Schroeder (the Taxpayer) protested these values to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$336,386 (18R 0008) and \$249,000 (18R 0009) for tax year 2018.
4. The County Board determined that the taxable value of the Subject Properties were \$368,020 (18R 0008) and \$334,525 (18R 0009) 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 4, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Kent A. Schroeder was present at the hearing for the Taxpayer.
8. Andrew W. Hoffmeister and Nora Borer (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 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

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 Taxpayer stated the land value for the Duplex (18R 0008) was over assessed due to the required setbacks of twenty-five feet from the roadway, making lot 18 “basically worthless” because of the inability to build on it. However, without lot 18, the Subject Property would not exist, thus making lot 18’s contribution to the parcel essential. The Assessor stated all other residential lots with similar restrictions are being valued similarly.
17. The Taxpayer purchased the Condominium (18R 0009) on the courthouse steps for \$249,000 in 2013 and feels a \$95,000 increase in value is unjustified. He said the only sale in the neighborhood of \$376,000 was to a doctor who would have paid anything for it and doesn’t think the Assessor should use this sale as the lone comparable to raise the value of the Subject Property. The Assessor stated that her office uses more than one sale when analyzing values for neighborhoods. The Assessor stated her office updated their Marshall and Swift costing tables from 2013 to 2016 for their CAMA system. Due to this

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).

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).

update, most improvement values in Buffalo County were increased for 2019. The Taxpayer did not offer any comparable properties or property record files to show the Subject Property was being incorrectly valued. The Assessor offered evidence of two comparable properties for the Subject Property, which tend to show that the value was equalized with similar parcels.

18. 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.
19. 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:

18R 0008

Land	\$39,575
<u>Improvements</u>	<u>\$328,445</u>
Total	\$368,020

18R 0009

Land	\$35,000
<u>Improvements</u>	<u>\$299,525</u>
Total	\$334,525

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.
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

James D. Kuhn, Commissioner