

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Sheila A. Staab,  
Appellant,

v.

Custer County Board of Equalization,  
Appellee.

Case No: 18R 0018

Decision and Order Affirming  
County Board of Equalization

### Background

1. The Subject Property is a single family residence, with a legal description of: Sec. 33-17-20 NENW .77 Acre Broken Bow City.
2. The Custer County Assessor (the Assessor) assessed the Subject Property at \$126,955 for tax year 2018.
3. Sheila A. Staab (the Taxpayer<sup>1</sup>) protested this value to the Custer County Board of Equalization (the County Board) and requested an assessed value of \$62,892 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$108,551 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 July 26, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Sheila A. Staab was present at the hearing.
8. Steven Bowers, County Attorney, was 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>2</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</sup>

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<sup>1</sup> County records indicate that the Subject Property is owned by HWYPF LLC. Ms. Staab advised the Commission that she is a member of the LLC; see Case File.

<sup>2</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>3</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>4</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>5</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>6</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</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>8</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>9</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted the Subject Property is in need of many repairs due in part to the age of the home and the way the home was constructed in 1888. The Taxpayer stated the house slopes toward the middle and doors and cupboard will not shut or will not stay shut. The Taxpayer said there are cracks in the plaster walls due in part to the large spans in the floor joist and the 2x6 joist used in the construction of the home in 1888. The Taxpayer feels the home would not pass inspection to be able to sell the home and should be considered fair quality and fair construction instead of the average quality and average construction maintained by the Assessor. The Taxpayer feels the depreciation of the home should be 80%.
17. The Taxpayer asserted the properties known as the Round Valley home and the home owned by Karl Arnold were two of the closest comparable properties to the Subject Property. The Round Valley home is similar in age (1900) but much smaller in square footage (1,284 compared to 2,182). The depreciation of the Round Valley home is 72% whereas the Subject Property is currently 60%. The Arnold home is similar in age (1900)

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<sup>4</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</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>9</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

and square footage (1,919 compared to 2,182) and shows a depreciation of 83% compared to the Subject Property at 60%.

18. The County Attorney asserted the Subject Property has had repairs that would affect the depreciation of the Subject Property. A new porch floor was installed about 10 years ago, newer windows were installed about 3 years ago, a metal roof was put on two or three years ago and a newer railing was installed on the second floor balcony.
19. The Assessor provided a spreadsheet with fourteen comparable properties that broke each property down by age, size and price per square foot. The Commission arrayed the data of all fourteen properties and found a median price per square foot to be \$40.29. The Commission also arrayed the data of only the three homes that were average quality and average condition and found the median of those properties to be \$38.14 (Subject Property). The Commission arrayed the data of the four comparable properties that were average quality and average condition or lower and found the median of \$32.32. When arraying the data provided by the Taxpayer of four comparable properties consisting of the Round Valley, Arnold, Rowden and Hunsberger properties, the Commission found the median to be \$35.62.
20. The Commission is not convinced the Subject Property is being valued incorrectly. The median price per square foot values found through analyzing the data support the current assessment on the Subject Property.
21. The Taxpayer felt as though the land values were incorrect as well; however, the Assessor provided a spreadsheet showing all the properties' land component being valued the same. The Commission found no evidence land values were not equitable.
22. 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.
23. 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	\$ 25,155
<u>Improvements</u>	<u>\$ 83,396</u>
Total	\$108,551

3. This Decision and Order, if no further action is taken, shall be certified to the Custer County Treasurer and the Custer 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 August 13, 2019.

Signed and Sealed: August 13, 2019

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James D. Kuhn, Commissioner