

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Frank J. Sibert,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 18R 0047

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family condominium, with a legal description of: Lake View Villas Condominium Unit 1-A.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$306,710 for tax year 2018.
3. Frank Sibert (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$241,325 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$296,300 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. Frank J. Sibert was present at the hearing.
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 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.”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 his value should be lowered due to the fact that referees for Buffalo County recommended lowering the assessed values of other condo units near the Subject Property. The referees recommended lowering assessments to varying values by changing quality ratings from a 4 to a 3 due to age of the units.
17. The property record files of the comparable properties appear to show the noticed assessment value and not the adjusted value if the County Board made adjustments to the assessments during the protest period. By analyzing the property record files given, all the comparable properties appear to be equalized.
18. The Assessor provided a spreadsheet with all the units in the Lake View Villas neighborhood; however, they show the 2019 values. Little weight was given to this spreadsheet. The Assessor said they would review this area in 2019 and adjust the condition of the properties if needed.

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).

19. 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.
20. 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	\$ 29,500
<u>Improvements</u>	<u>\$266,800</u>
Total	\$296,300

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 16, 2019.

Signed and Sealed: April 16, 2019

James D. Kuhn, Commissioner