

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

Nancy L. Johnson,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 18R 0048

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling on 2.81 acres, with a legal description of: 23-10-16 TR in SE Corner SW1/4 (2.81A).
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$118,820 for tax year 2018.
3. Nancy L. Johnson (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$98,585 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$118,820 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, 2<sup>nd</sup> Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Nancy L. Johnson 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.<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. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>7</sup>

#### Findings of Fact & Conclusions of Law

15. The Taxpayer stated that the Subject Property is an older home with many issues that need to be fixed. She stated the second floor of the home had a fire a couple years ago and has been uninhabitable since, so the stairway to the second floor has been shut off. The Taxpayer also asserted the County has incorrect information on the property record file. The County shows a Solid Wall Enclosed Porch which is actually a Lean-to built onto the home. There is no doorway from the Lean-to leading into the home. The County also shows the Subject Property being 100% heated and cooled when in actuality the home is cooled by window air conditioners. Another incorrect feature is the slant wall utility building, which is being valued having a concrete floor when in reality it has a dirt floor.
16. Although both parties agree there are errors on the property record file for the Subject Property, the Commission has no way to determine what change to the value of the Subject Property is appropriate.
17. 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>

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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> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<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).

18. The Taxpayer did not present any evidence as to the change in actual value due to a dirt floor in place of a concrete floor, a lean-to in place of a porch, or any of the other issues discussed during the hearing.
19. No comparable sales or other comparable properties were provided by the Taxpayer to show the assessment is arbitrary or unreasonable.
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	\$ 68,975
<u>Improvements</u>	<u>\$ 49,845</u>
Total	\$118,820

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

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James D. Kuhn, Commissioner