

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joseph E. Methe,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 18R 0192

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Sunny Meadows Estates Blk 4 Lot 5.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$492,890 for tax year 2018.
3. Joseph Methe (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$425,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$492,890 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, 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Joseph E. Methe and Pam Methe were 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 the valuation of the Subject Property is higher than other similar properties. After compiling his evidence for the hearing, the Taxpayer requested a lower value (\$400,000) than at the protest proceedings, after seeing what similar properties were selling for. The Taxpayer offered three comparable properties that are, according to the Taxpayer, within a mile of the Subject Property and have sold within two years of the 2018 assessment. Sale prices of the three comparable homes range in sale price from \$380,000 to \$395,000. The assessed values of these homes range from \$314,275 to \$392,945.
17. The Assessor stated the increase in the improvement values in Buffalo County was primarily due to the County Assessor’s office updating the Marshall and Swift costing tables from 2013 to 2016.
18. The Taxpayer testified he went to the County Assessor’s office to get property record files for his comparable properties but was told he didn’t need them and could just print the information off the County Assessor’s web page. Property record cards assist the

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).

Commission in showing the costing breakdowns of the components of a property and are generally more helpful than the data sheets that can be printed off the County Assessor's website; however, under circumstances in which the Taxpayer attempted to comply with the Commission's Order for Hearing⁹ and was not provided with the appropriate documents by the County Assessor, the data sheets can be used to determine properties' comparability.

19. The Commission has analyzed the property data sheets and accompanying MLS (multiple listing service) sheets and found the Subject Property to be assessed above market value. Using the median price per square foot of the sales, minus land value, the indicated price per square foot would be \$158.53 and the indicated value of the Subject Property would be \$322,125 (rounded). After adding in the land value of \$57,165 the indicated total value would be \$379,290 (rounded).
20. The Taxpayer has 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 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 57,165
<u>Improvements</u>	<u>\$322,125</u>
Total	\$379,290

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.

⁹ See Order for Single Commissioner Hearing and Notice, paragraph 7, case file.

Signed and Sealed: April 16, 2019

James D. Kuhn, Commissioner