

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joseph D. Barber,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 18R 0031

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family manufactured home, with a legal description of: Colonial Estates Add Lt 1 Blk 6.
2. The Buffalo County Assessor (the Assessor) assessed the Subject Property at \$197,100 for tax year 2018.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$188,240 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$191,200 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 November 21, 2018, at the Law Enforcement Center, 111 Public Safety Drive, 2nd Floor Community Room, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Joseph D. Barber was present at the hearing for the Taxpayer.
8. Andrew W. Hoffmeister, Deputy County Attorney, and Ethel Skinner, 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
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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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).

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 asserts that his home is being valued on the curb appeal and not on the interior make-up of the home. The Taxpayer provided exhibits proving the Subject Property is a manufactured home and not a stick built home. Numerous interior photos were provided and highlighted the “Rosette” strips as referenced by the Taxpayer (commonly known as wall strips) across the walls as well as the ceiling beam running the entire length of the home.
17. Many defects of a manufactured home were highlighted by the Taxpayer, including the need for all wiring in the basement to be external and not hidden, baseboard heating, lower ceilings in hallways, no air conditioning in the basement, and the basement block was not sealed when built, causing water problems in the basement.
18. The Taxpayer asserts that since the Subject Property is actually a manufactured home, it should not be compared to stick built homes.
19. Six comparable property record files were provided by the Taxpayer. The home at 1911 W 41st street is the best comparable according to the Taxpayer. One of the comparable properties located at 1711 W 40th street had its value lowered and the Taxpayer feels it is a superior home. Although the Taxpayer doesn’t feel he should be compared to stick built

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) (2016 Cum. Supp.).

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) (2016 Cum. Supp.).

homes, all of his comparable properties are stick built homes. No property record files of manufactured homes were provided to show they are valued differently than stick built homes.

20. The Assessor stated the attached garage is heated and insulated with a treated floor as well as a kitchen and bathroom remodel being done. The Assessor estimated the Condition of the home could possibly be changed from Good to Average but did not know how that adjustment would affect the value.
21. 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.
22. 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	\$ 49,740
<u>Improvements</u>	<u>\$141,460</u>
Total	\$191,200

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 (2016 Cum. Supp.).
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 December 11, 2018.

Signed and Sealed: December 11, 2018

James D. Kuhn, Commissioner