

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

Matthew J. Maly,  
Appellant,

v.

Butler County Board of Equalization,  
Appellee.

Case No: 19R 0006

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property’s legal description is: Bruno W 88’ of Lot 19 BLK 6 Original Town Bruno.
2. The Butler County Assessor (the Assessor) assessed the Subject Property at \$2,440 for tax year 2019.
3. Matthew J. Maly (the Taxpayer) protested this value to the Butler County Board of Equalization (the County Board) and requested an assessed value of \$90 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$2,440 for tax year 2019.
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 October 16, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Matthew J. Maly was present at the hearing.
8. Vickie Donoghue (the Assessor) 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>1</sup>
10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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. 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>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated the Subject Property is a vacant lot with a self-assembled trailer. The Taxpayer contends the trailer is a vehicle rather than real property. The Taxpayer stated the trailer is not permanently attached, has wheels, and has no utilities.
17. The Assessor stated the Subject Property is actually a tiny home and should be considered as real property. The Assessor stated that mobile homes have wheels but are considered real property.
18. The Commission has analyzed the evidence and reviewed the property record file (PRF) as well as photos of the Subject Property.
19. Under Nebraska law, real property includes, among other things, “Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes[.]”<sup>9</sup>
20. “Mobile home, cabin trailer, and similar property means every portable or relocatable device of any description without motive power, which is used, or designed to be used for residential, office, commercial, agricultural, or other similar purposes.”<sup>10</sup>
21. The trailer does not have an engine or other motive power.
22. The front portion of the trailer has a pitched roof, a door, and windows. This portion of the trailer appears to have been designed to resemble a small house.

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

<sup>9</sup> Neb. Rev. Stat. § 77-103(4) (2019 Supp.).

<sup>10</sup> 350 Neb. Admin. Code, Ch. 10 § 002.18F.

23. The Taxpayer acknowledged at the hearing that he lives in the trailer and designed it for that purpose.
24. The Commission finds that the trailer was designed primarily for residential purposes.
25. As of January 1, 2019, the trailer was a mobile home, cabin trailer, or other similar property.
26. The trailer was not registered for highway use as of January 1, 2019. On July 3, 2019, in response to the County Assessor's determination that the trailer was real property, the Taxpayer registered the trailer with the Butler County Treasurer for highway use as a utility trailer.
27. The trailer met the definition of real property as of the assessment date of January 1, 2019.
28. 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.
29. 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.

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is affirmed.  
The taxable value of the Subject Property for tax year 2019 is \$2,440.
2. This Decision and Order, if no further action is taken, shall be certified to the Butler County Treasurer and the Butler County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
3. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2019.
6. This Decision and Order is effective on February 10, 2021.

Signed and Sealed: February 10, 2021

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James D. Kuhn, Commissioner