

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Curtis W. Wilkerson,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 20C 0010

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
BUFFALO COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a commercial parcel with a legal description of North Gate Add Ky Lot 2. Curtis W. Wilkerson (the Taxpayer) uses the Subject Property to sell modular homes, and a modular home was situated on the Subject Property as of January 1, 2020.
2. The Buffalo County Assessor (the County Assessor) assessed the real property component of the Subject Property at \$480,000, for tax year 2020. The County Assessor assessed the modular home as personal property at \$166,045 for tax year 2020.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$170,000 for the parcel and \$0 for the modular home as exempt inventory for tax year 2020.
4. The County Board determined that the modular home was real property and determined the combined total taxable value of the Subject Property was \$443,805 for tax year 2020.
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 June 15, 2021, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Curtis Wilkerson was present at the hearing.
8. Andrew Hoffmeister (the County Attorney) and Nora Borer (the Deputy 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. Real property includes all buildings, improvements, and fixtures.² Real property also includes mobile homes, cabin trailers, and similar property “used, or designed to be used,” for residential, office, commercial, or other similar purposes, except “when

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² Neb. Rev. Stat. § 77-103(2).

unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business.”³

11. “Unoccupied” means “not routinely characterized by the presence of human beings.”⁴
The use of the property informs the definition of occupancy of the property.⁵
12. The phrase “held for sale” is used to describe inventory.⁶ The determination of inventory is based on “whether they are held for immediate or ultimate sale. In borderline cases, the principal use to which the property is put should be considered determinative.”⁷
13. The Commission’s review of a determination of the County Board of Equalization is de novo.⁸
14. 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.”⁹ 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.”¹⁰
15. 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.¹¹
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹²
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.¹³
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

³ Neb. Rev. Stat. § 77-103(4).

⁴ *Rojas v. Scottsdale Ins. Co.*, 267 Neb. 922, 927, 678 N.W.2d 527, 531 (2004) (citing Black’s Law Dictionary 1546 (7th ed. 1999)).

⁵ *Id.* at 929-30, 678 N.W.2d at 532-33.

⁶ See 350 Neb. Admin. Code, ch. 20, § 005.01A.

⁷ *First State Bank v. Producers Livestock Mktg. Assn.*, 200 Neb. 12, 16, 261 N.W.2d 854, 858 (1978) (citing Neb. U.C.C. § 9-102); Neb. U.C.C. § 9-102, cmt. 4 (“In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use . . .”).

⁸ 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).

⁹ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

¹⁰ *Id.*

¹¹ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹² *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ 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).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

Findings of Fact & Conclusions of Law

19. The Taxpayer purchased the parcel in March 2015 for a sale price of \$480,000. The commercial parcel is used in the operation of the Taxpayer's prefabricated modular home business. A "model" modular home was present on the property through the entirety of the applicable tax year 2020. The Taxpayer sold the model in 2021, and as of the hearing date, the model was to be removed from the Subject Property in August 2021. A new model will be present in September 2021.
20. The Taxpayer stated that 144 sq. ft. (11%) of the modular home on the parcel was utilized as an office 66% of the year. However, the modular home was present on the parcel on the date of assessment and for the entirety of the tax year with hooked up and fully functioning utilities. If the Taxpayer desired, on the date of assessment, or on the final date of the tax year, the parcel could have been sold as an improved parcel.
21. The Taxpayer stated that after the sale of the modular home, it will be replaced, just as had been done previously. There are benefits of having a physical structure on the parcel that the Taxpayer is receiving. The parcel was acquired and is used to conduct business, and the presence of a physical structure on that parcel is useful for that purpose.
22. The Taxpayer asserts that the model home is inventory "much like a car at a car dealership." However, motor vehicles are separately classified and governed by different provisions of the Nebraska Constitution and Nebraska Revised Statutes. Therefore, motor vehicles never constitute real property or tangible personal property for the purposes of taxation in Nebraska. Thus, any comparison to motor vehicle inventory does not constitute competent evidence and is given no weight.
23. The record is unclear which subsection of Nebraska Revised Statutes, section 77-103, governs the modular home at issue. However, assuming that the model is "similar property" under subsection (4), it fails the requirements for exclusion contained in subsection (4) because it is not "unoccupied" as that term is defined by Nebraska courts. Thus, the model is properly categorized as real property and, accordingly, subject to real property taxation.
24. 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.
25. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is \$443,805.
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 2020.
7. This Decision and Order is effective on August 13, 2021.

Signed and Sealed: August 13, 2021

James D. Kuhn, Commissioner