

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Carol R. Wahl,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 20R 0007

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

Background

1. The Subject Property is Residential with a legal description of Fairacres 4th Sub KY LT 15 & S 3' LT 16 BLK 2.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$346,245 for tax year 2020.
3. Carol R. Wahl (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$295,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$346,245 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, NE, before Commissioner James D. Kuhn.
7. Carol Wahl was present at the hearing for the Taxpayer.
8. Andy 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. The Commission's review of a 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, 759 N.W.2d 464, 473 (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 value of the Subject Property increased 17.37%, while the 18 surrounding neighborhood homes only increased in value an average of 0.57%. The Taxpayer provided a spreadsheet containing assessed value comparisons of the 2017, 2018, 2019, and 2020 valuations for the 18 neighborhood homes. No property record files were provided for any of the comparable homes.
17. The Taxpayer provided an appraisal that was completed as of July 31, 2018, showing a value of \$295,000. The Taxpayer stated the Subject Property has not changed since the appraisal was completed and feels the 2020 value should be lowered to the appraised value of \$295,000.
18. The Deputy Assessor provided a spreadsheet with data on the same 18 neighborhood comparables the Taxpayer provided. The spreadsheet was more detailed than the Taxpayer’s and showed that the Subject Property was one of the lower valued homes in the neighborhood on a price-per-square-foot comparison. The Deputy Assessor stated the Subject Property was the largest home in the neighborhood by over 700 square feet and

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).

had more than 500 square feet of additional finished basement square footage than any of the comparable properties.

19. The Assessor stated the Subject Property was valued with the same valuation model that all the comparable neighborhood properties were valued and feels the valuation is correct for 2020.
20. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ Similarly, prior assessments of other properties are not relevant to the current assessment.¹¹
21. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 44,110
<u>Improvements</u>	<u>\$302,135</u>
Total	\$346,245

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 July 8, 2021.

Signed and Sealed: July 8, 2021

James D. Kuhn, Commissioner

⁹ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ *Id.* at 613, 428 N.W.2d at 206 (1988); *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944).

¹¹ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

