

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

Susan A. Sidwell,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 15R 0138

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a residential acreage located in Buffalo County which is a part of the N1/2 NE1/4 of 33-9-14, Buffalo County, Nebraska. The tract contains 8.85 acres.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$176,390 for tax year 2015.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$163,115 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$171,070 for tax year 2015.
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 August 3, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J. Salmon.
7. Susan A. Sidwell was present at the hearing for the Taxpayer.
8. Andrew Hoffmeister, Buffalo Deputy County Attorney, was present for the County Board. Also present on behalf of the County Board were County Assessor Joe Barber and Deputy County Assessor Nora Borer.

**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 the 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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 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.”<sup>3</sup> 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.”<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 sole issue to be determined in this case involves the value of the dwelling on the Subject Property. Neither party disputed the valuation placed on the land or the outbuildings. The County Assessor valued the dwelling at \$138,000, and as a result of the Taxpayer’s protest, the Board apparently reduced this value by 5%, arriving at a value of \$132,770. The Taxpayer seeks a further reduction to \$129,700 for the dwelling. The County Assessor did not disagree with the Board’s ultimate valuation.
17. The submitted evidence reflects that the dwelling was constructed in 1953 and has only been minimally updated. It appears that the Board recognized the structure’s deficiencies when it lowered the value as a result of the protest. The Taxpayer’s opinion of value was simply her opinion, and she provided no additional support with respect to this value.
18. As was previously noted, the Taxpayer has the burden of proof in cases such as this. 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.
19. 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.

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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 2015 is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 30,190
Dwelling	\$132,770
<u>Improvements</u>	<u>\$ 8,110</u>
Total	\$171,070

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 (2014 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 2015.
7. This Decision and Order is effective on August 8, 2016.

Signed and Sealed: August 8, 2016.

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Nancy J. Salmon, Commissioner