

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

Miller Memorial Care Center, LLC,  
Appellant,

v.

Deuel County Board of Equalization,  
Appellee.

Case No: 17C 0043

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is a Nursing Home, with a legal description of: All Lot 1; E 40' of N/2 Lot 2; All S/2 Lot 2; E 10' of S/2 Lot 3 & All 11 & 12 Block 10 O'Neils Add to Chappell.
2. The Deuel County Assessor (the County Assessor) assessed the Subject Property at \$506,955 for tax year 2017.
3. Miller Memorial Care Center, LLC (the Taxpayer) protested this value to the Deuel County Board of Equalization (the County Board) and requested an assessed value of \$100,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$506,955 for tax year 2017.
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 July 5, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Ryan Sullivan was present at the hearing for the Taxpayer.
8. Joel Jay, Deuel County Attorney, and Marica Schievelbein, the County 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.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</sup> 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).

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 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. Ryan Sullivan, grandson of LLC member Kenneth Asche, presented testimony for the Taxpayer.
17. The Taxpayer purchased the Subject Property and all of its contents on or about June 25, 2014. The real property (building and land) was purchased for \$100,000; the contents (supplies, medical equipment, etc.) were purchased for \$250,000. The Taxpayer feels that the purchase price of \$100,000 should be reflected in the assessment of the Subject Property.<sup>9</sup>
18. The Subject Property has ceased operation as a nursing home and assisted living facility. The Taxpayer listed the property and all its contents for sale for \$199,900 approximately two months prior to the hearing, and as of the date of the hearing, had not had any legitimate interest.
19. The County Board stated that they used Tax Valuation Inc. to assist in valuing the Subject Property. Joe Wilson from Tax Valuation Inc. stated he performed an exterior

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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) (2016 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) (2016 Cum. Supp.).

<sup>9</sup> The Commission notes that this review of the Subject Property deals only with the real property, i.e., land and buildings, not the personal property sold along with it.

inspection of the Subject Property and used sales of nursing homes that have sold in Nebraska to set the valuation of the Subject Property. The Taxpayer stated that sale prices of nursing homes that are currently in operation are not truly comparable as those sale prices included an ongoing business.

20. The County Board stated that an appraisal done in 2008 indicated a value of \$1.5 million, they also stated that an offer to purchase this property for \$450,000 fell through prior to Mr. Asche purchasing the Subject Property.
21. The fair market value is the “value of the property if offered for sale upon the open market as between one who is ready and willing to sell but is not compelled to sell, and one who is ready, able and willing to buy but is not required to buy.”<sup>10</sup> Evidence of sale price alone may not be sufficient to overcome the presumption that a board of equalization has valued property correctly, but where the evidence discloses the circumstances surrounding the sale and shows that it was an arm’s length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.<sup>11</sup>
22. The evidence presented in this case demonstrates that the Subject Property was purchased for \$100,000 in 2014 along with personal property purchased for \$250,000. That same property, both real and personal, has been offered for sale for \$199,000, more than \$300,000 less than the County Board’s value for the real property alone. This offer has not generated any legitimate interest. As a result, the best indicator of the actual value of the Subject Property is the 2014 sales price of \$100,000.
23. The Taxpayer has adduced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. The Taxpayer has 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 vacated.

## 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 2017, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Total	\$100,000
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<sup>10</sup> *McArthur v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 96, 106, 547 N.W.2d 716, 724 (1996).

<sup>11</sup> *Potts v. Bd. of Equal. of Hamilton Cty.*, 213 Neb. 37, 328 N.W.2d 175 (1982).

3. This Decision and Order, if no further action is taken, shall be certified to the Deuel County Treasurer and the Deuel 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 2017.
7. This Decision and Order is effective on July 12, 2018.

Signed and Sealed: July 12, 2018

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James D. Kuhn, Commissioner