

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

Kyle W. Hoehner,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 17R 0015

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a vacant lot, with a legal description of: Hoehner Estates, 3<sup>rd</sup> Addition Blk 2, Lot 3.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$66,695 for tax year 2017.
3. Kyle W. Hoehner, (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$10,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$66,695 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 April 1, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2<sup>nd</sup> Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Kyle W. Hoehner was present at the hearing.
8. No one appeared at the hearing to represent 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>
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 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).

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 Taxpayer was the only party represented at the hearing and provided testimony as to the value of the Subject Property. An owner who is familiar with the property and knows its worth is permitted to testify as to its value; the owner is qualified to do so by his familiarity with the property’s characteristics, its actual and potential uses, and the owner’s experience in dealing with it.<sup>9</sup>
17. The Taxpayer presented information showing that the County assessed the Subject Property as a lot ready for residential development. However, due to its location and characteristics, the Subject Property would require extensive improvement to be made developable. In past years, the County Board has recognized this problem by valuing the Subject Property at \$10,000, which is the Taxpayer’s opinion of its value.
18. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

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<sup>3</sup> *Brenner* at 283, 811.

<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. Cty. 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> *United States Ecology, Inc. v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999); *McArthur v. Papio-Missouri River Nat. Res. Dist.*, 250 Neb. 96, 547 N.W.2d 716 (1996).

19. 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:

Land	\$10,000
<u>Improvements</u>	<u>\$0</u>
Total	\$10,000

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 2017.
7. This Decision and Order is effective on May 3, 2019.

Signed and Sealed: May 3, 2019

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James D. Kuhn, Commissioner