

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

Brooks Carmichael,  
Appellant,

v.

Johnson County Board of Equalization,  
Appellee.

Case No: 17R 0145

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a rural residential home on an acreage, with a legal description of: SEC 31-4-9 45.44A Tax Lot #1 IRR TR in S2W2.
2. The Johnson County Assessor (the Assessor) assessed the Subject Property at \$350,385 for tax year 2017.
3. Brooks Carmichael (the Taxpayer) protested this value to the Johnson County Board of Equalization (the County Board) and requested an assessed value of \$278,846 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$350,385 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 May 24, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Brooks and Mary Carmichael were present at the hearing.
8. Richard R. Smith, Johnson County Attorney, and Terry Keebler, the 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 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).

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. The Taxpayer took issue with a large increase in valuation from 2016 to 2017. The Taxpayer stated he would have been okay with a nominal increase but felt the substantial increase of 30% was in excess. The Taxpayer stated his location in the extreme southwest corner of Johnson County has a negative effect on his property value. The Taxpayer depends on neighboring counties for road maintenance as well as fire and rescue services.
17. The Taxpayer stated he spoke with a realtor who said the Subject Property would not sell for \$300,000 or more. No paperwork from the realtor was given as evidence nor was the realtor available for questioning at the hearing.
18. The Assessor stated that he is valuing the Subject Property using the same methodology as he uses for all other rural residential properties in Johnson County. The Assessor asserted that his office has changed CAMA (computer assisted mass appraisal) systems and updated to the new costing tables to better reflect current market conditions. The Subject Property is located in an area that was recently reappraised and all the

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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).

information was entered into the new CAMA system, resulting in the increase in assessed value of the Subject Property.

19. The Assessor stated that sale prices of rural residential properties have shown an increase in the sales study.<sup>9</sup>
20. The Taxpayer did not provide any property record files of comparable properties or any evidence the Subject Property was being valued differently than any other similar property.
21. 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.
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 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$127,581
<u>Improvements</u>	<u>\$222,804</u>
Total	\$350,385

3. This Decision and Order, if no further action is taken, shall be certified to the Johnson County Treasurer and the Johnson 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 June 7, 2019.

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<sup>9</sup> The sales study is a record of sales that are used to measure the level of value of certain types of properties throughout the county. The study period of residential properties is the prior two years of assessment whereas the study period of agricultural land is three years prior to assessment. The study period is from September 31 until October 1 prior to the year of assessment.

Signed and Sealed: June 7, 2019

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James D. Kuhn, Commissioner