

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gaylyn L. Longfellow,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case Nos: 18C 0007 & 18C 0008

Decision and Order Reversing
the Determination of the Buffalo County
Board of Equalization

Background

1. The Subject Property consists of two commercial parcels with legal descriptions of WHITAKER GROVE ADD KY LOTS 8 TO 14 BLK 5 & 7 OF VAC ALLEY ADJACENT (18C 0007) and WHITAKER GROVE ADD KY LTS 1-3 N 1/2 LT 4 BLK 6 & E7' VAC AVE P BETWEEN BLKS 5 & 6 (18C 0008).
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$145,290 (18C 0007) and \$169,460 (18C 0008) for tax year 2018.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$85,000 (18C 0007) and \$145,000 (18C 0008) for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$145,290 (18C 0007) and \$169,460 (18C 0008) for tax year 2018.
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 scheduled for November 21, 2018, before Commissioner James D. Kuhn.
7. Prior to the time set for hearing, the parties jointly submitted stipulated facts and waived the right to hearing, requesting that the Commission make a decision on the basis of the stipulations.

Applicable Law

8. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
9. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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).

10. 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
11. The parties to an appeal or petition may request in writing that an appeal or petition be submitted for the Commission’s decision without a hearing.⁵ The parties shall submit by joint stipulation the exhibits or other evidence to be considered by the Commission.⁶
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.⁷
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
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.⁹
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

Findings of Fact & Conclusions of Law

16. Among other things, the parties stipulated as follows:

1. This is primarily [a] dispute in value as to whether the two parcels in question should be valued as one parcel or as two separate and distinct parcels.

11. After review of applicable laws and relative values of property in the taxing district, Buffalo County agrees with [the Taxpayer] in that this should be valued as one tract at the value submitted by the taxpayer, totaling \$230,000 for tax year 2018, valued as:
[Case No. 18C 0007:] \$85,000

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ 442 Neb. Admin. Code Ch. 5 §015 (06/2011).

⁶ 442 Neb. Admin. Code Ch. 5 §015.02 (06/2011).

⁷ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

[Case No. 18C 0008:] \$145,000

17. The Commission declines to rule on any issues raised related to the permissible definition and combination/consolidation of the two parcels.
18. The Commission notes that multiple commercial parcels are routinely assessed as a single economic unit when appropriate to the circumstances.
19. The Commission finds that the actual value of the parcels is as stipulated by the parties.
20. 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.
21. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is \$85,000 (Case No. 18C 0007) and \$145,000 (Case No. 18C 0008).
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 (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 2018.
7. This Decision and Order is effective on December 5, 2018.

Signed and Sealed: December 5, 2018

James D. Kuhn, Commissioner