

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gary D. Suing,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 18R 0190

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Rapp Add Lot 5 Blk 2.
2. The Buffalo County Assessor assessed the Subject Property at \$205,775 for tax year 2018.
3. Gary D. Suing (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$197,500 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$205,775 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 held on April 4, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Gary D. Suing and Patricia Suing were present at the hearing.
8. Andrew W. Hoffmeister and Nora Borer (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 1.¹
10. 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 2018).

² 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.”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
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer feels the land value is in excess of market value. He stated there are nearby properties with larger lot sizes that are valued less than the Subject Property. The Taxpayer stated a neighbor across the street had their land value lowered by the Board during the protest period and he feels his should be lowered as well.
17. The Assessor stated sales of vacant lots are used to determine lot values and that neighborhoods will possibly have differing land values. The Assessor was unsure why the Board lowered the lot value across the street from the Subject Property. The Assessor said neighborhoods will have different land values and was unsure if the house across the street from the Subject Property was in the same neighborhood. The Assessor also stated all the lot values in the Subject Property’s neighborhood were valued using the exact same method.
18. The Taxpayer provide a spreadsheet showing numerous addresses with lots sizes and values. The thirteen addresses nearest the Subject Property are all the same size and same

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

valuation. Addresses farther from the Subject Property vary in size and are not necessarily in the same neighborhood according to the Assessor.

19. The Taxpayer did not provide any property record files for comparable properties, including the lot he alleged had been lowered by the County Board, and did not provide any evidence of sales that showed lower lot values.⁹
20. 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.
21. 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 2018, is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 50,400
<u>Improvements</u>	<u>\$155,375</u>
Total	\$205,775

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 2018.
7. This Decision and Order is effective on April 10, 2019.

Signed and Sealed: April 10, 2019

James D. Kuhn, Commissioner

⁹ Paragraph 7 of the Commission's Order for Single Commissioner Hearing and Notice clearly states that copies of the County's property record file should be provided to the Commission for any parcel a party intends to present as a comparable parcel.