

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Henry D. Sader, III,
Appellant,

v.

Hall County Board of Equalization,
Appellee.

Case No: 15A 0133

Decision and Order Affirming the Decision
of the Hall
County Board of Equalization

Background

1. The Subject Property is 115.88 acre agricultural parcel in Hall County, Nebraska. The legal description is found in the case file.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$71,441 for tax year 2015.
3. The Taxpayer protested this value to the Hall County Board of Equalization (the County Board) and requested a taxable value of \$23,176 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$71,441 for tax year 2015.
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 August 1, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Henry D. Sader, III was present at the hearing.
8. Jack Zitterkopf, Hall County Attorney, and Jan Pelland, Hall 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 1.¹
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 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).

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 County Assessor and County Board determined that the Subject Property consisted of 30.25 acres of grassland, 63.34 acres of accretion, and 22.29 acres of wasteland.
17. The Taxpayer asserted that only 7 or 8 acres were grassland. The Taxpayer provided a letter, dated July 25, 2017, from a prospective renter who inspected the property for the purposes of cattle grazing. According to the letter, the property had only 7 to 8 acres of grassland suitable for grazing.
18. The Taxpayer asserted that more and more of the property was becoming overgrown with trees and brush each year. He asserted the property was suitable for hunting and that it was actually used for hunting approximately 6 times per year. The Taxpayer asserted that he did not rent the property for purposes of hunting.
19. The Taxpayer provided no other evidence that quantified the uses of the 115.88 acres as of the effective date of January 1, 2015.
20. The Commission finds that there is not sufficient evidence to conclude that the acre use determinations by Hall County as of the effective date were arbitrary or unreasonable.

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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. 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

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 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$71,441.
3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 2015.
7. This Decision and Order is effective on August 2, 2017.

Signed and Sealed: August 2, 2017

Robert W. Hotz, Commissioner