

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Werner W. Blank,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case Nos: 16A 0001 & 18A 0010

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a Monarch Grain Bin, with a legal description of: ILL Tax Lots NE1/4 NE1/4 PT SE1/4 Tax Lot 10.
2. The Madison County Assessor (the County Assessor) assessed the Subject Property at \$4,428 for tax year 2016 and \$3,986 for tax year 2018.
3. Werner Blank (the Taxpayer) protested this value to the Madison County Board of Equalization (the County Board) and requested an assessed value of \$2,830 for tax year 2016 and \$2,500 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$3,986 for tax year 2016 and \$3,283 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 October 16, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Jeff Hackerott (the Assessor) was 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
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

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

² 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).

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 provided a sale of a Sukup grain bin that had been auctioned in 2015 for \$4,100. The Taxpayer felt this was a comparable grain bin even though it was newer. The buyer of the Sukup grain bin had to remove the bin after purchase.
17. The Taxpayer also noted that access to the Subject Property was difficult since trucks needed to maneuver through a city street and a portion of a shared driveway. He stated that semi-trailer truck access is nearly impossible due to these conditions.
18. The Assessor recognized the access difficulties and recommended a 10% functional depreciation to account for this in the 2016 protest hearing. In the 2018 protest hearing, the Assessor recommended a lower assessment by adding 3% to the physical depreciation.
19. The Assessor stated that the Subject Property was listed as an 8,738 bushel bin. This measure may differ slightly from actual bushel capacity due to internal components of each individual grain bin. The method of measuring the exterior diameter and height of a grain bin to obtain bushel capacity is used by assessors and is the same for all grain bins.
20. Although the Taxpayer provided a sale of one grain bin, one sale does not set the market. The grain bin that was sold had to be removed after the sale, and one could assume that

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.).

would be a detriment to the value of the grain bin as compared to a sale of a grain bin that would not have to be removed. The access problems of the property have been taken into account by the Assessor by adding a 10% functional depreciation. No evidence was given by the Taxpayer to show an actual dollar amount that the access problems affected the value of the Subject 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 2016 and 2018, is affirmed.
2. The taxable value of the Subject Property is:

2016		
	<u>Improvements</u>	<u>\$3,986</u>
	Total	\$3,986

2018		
	<u>Improvements</u>	<u>\$3,283</u>
	Total	\$3,283

3. This Decision and Order, if no further action is taken, shall be certified to the Madison County Treasurer and the Madison 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 years 2016 and 2018.
7. This Decision and Order is effective on October 19, 2018.

Signed and Sealed: October 19, 2018

James D. Kuhn, Commissioner