

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joseph H. Berg,
Appellant,

v.

Sherman County Board of Equalization,
Appellee.

Case No: 16R 0014

Decision and Order Affirming the
Determination of the Sherman County
Board of Equalization

Background

1. The Subject Property is a 39.987 acre parcel improved with a 2,560 square foot 1 ½ story residence and an outbuilding, with a legal description of: E ½ W ½ NW ¼ -32-13-15 (Survey 39.987) Hazard, Sherman County, Nebraska.
2. The Sherman County Assessor (the County Assessor) assessed the Subject Property at \$383,890 for tax year 2016.
3. The Taxpayer protested this value to the Sherman County Board of Equalization (the County Board) and requested an assessed value of \$292,110 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$383,890 for tax year 2016.
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 June 19, 2017, at the the Holiday Inn Express, 508 2nd Avenue South, Kearney, NE, before Commissioner Steven A. Keetle.
7. Joseph H. Berg, Matt Lance, and Susan Bedrord, were present at the hearing for Joseph H. Berg (Taxpayer).
8. Heather Sikyta Sherman County Attorney and Sherie Kuszak Sherman 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 Taxpayer requested a lower assessed value on the improvements on the Subject Property, however no information or argument regarding the value of the improvements was presented at the single Commissioner hearing to allow the Commission to determine a different assessed value for the improvements.
17. The Taxpayer alleged that the Subject Property should be classified and assessed as agricultural property.
18. For 2016 the Subject Property was recorded as Farm: 2760 with the US Department of Agricultural, Farm Services Agency, whose records showed 39.62 acres of farm land and 4.28 acres of cropland.
19. Also for tax year 2016 the Taxpayer reported \$1,200 of farm rental income generated with the Subject Property. Eight horses and their foals grazed on the Subject Property in 2016 but the amount of time that these animals spent on the Subject Property was not stated. The Taxpayer indicated that he was planning to sell wood from the Subject

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.).

Property but that no wood had been sold from the Subject Property. The Subject Property is not owned or farmed in conjunction with another parcel of property.

20. The Taxpayer presented information indicating that he had a Cost-Sharing agreement with the Nebraska Soil and Water Conservation Program to install livestock pipeline, steel tanks, and barb wire fence on the Subject Property, which work was completed in the spring of 2016.
21. The County Assessor indicated that in 2015 the County did a review of all rural acreage properties and revised the per acre valuations for rural residential properties.
22. The County Assessor determined that properties under 40 acres which contained a residence was classified as an acreage rather than a farm unless operated in conjunction with other agricultural or horticultural land.
23. Excluding the home site acre the majority of the Subject Property is wooded and contains a deep winding creek limiting access. The property was described by the Taxpayer in his protest to the County Board as a bird and animal sanctuary with no profitable use.
24. The Taxpayer presented the Property Record Files for nearby land that he asserted were comparable to the Subject Property but assessed as agricultural and horticultural land.
25. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.⁹
26. The information before the Commission indicates that the primary use of the Subject Property was not for agricultural or horticultural purposes.
27. The information before the Commission indicates that the primary use of the properties presented that were assessed as agricultural or horticultural land were for agricultural or horticultural purposes.
28. 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.
29. 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 vacated.

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, is Affirmed.

⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$136,450
<u>Improvements</u>	<u>\$247,440</u>
Total	\$383,890

3. This Decision and Order, if no further action is taken, shall be certified to the Sherman County Treasurer and the Sherman 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 2016.
7. This Decision and Order is effective on October 18, 2017.

Signed and Sealed: October 18, 2017

Steven A. Keetle, Commissioner