

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Terry L. Petersen,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 18A 0161

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is agricultural land, with a legal description of: 32-8-13 S1/2 Lot 1 SE1/4 Also Desc as S 30 Ac of N 60 Ac of SE1/4 30 Ac Belmont.
2. The Otoe County Assessor (the Assessor) assessed the Subject Property at \$81,580 for tax year 2018.
3. Terry Peterson (the Taxpayer) protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$50,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$80,580 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 May 22, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Terry L. Petersen was present at the hearing.
8. Christina Smallfoot, 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 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).

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 stated more of his land lying near a creek running through the Subject Property should be classified as waste ground due to runoff from an adjacent parcel that flows through a box culvert and onto the Subject Property causing a buildup of silt, which according to the Taxpayer, makes part of the land useless.
17. The Assessor stated she has valued this property the same as other similar properties along the same creek. She feels the Subject Property is being equalized with other similar properties that are situated along the same creek. The Subject Property was being valued as a rural residential site but has been changed to reflect the usage of ground as agricultural. Additionally, following the protest, the Assessor corrected an error in the number of dry tillable acres on the Subject Property and recommended the reduction eventually adopted by the County Board.
18. The Taxpayer did not provide a property record card for the Subject Property showing what acres were affected by the runoff from neighboring properties, nor did he provide evidence as to how many acres are being affected by the runoff from neighboring properties. Without evidence of exactly how many acres are affected and what effect the

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).

runoff has on the usability of the Subject Property, the Commission cannot determine a value other than what the County Board has determined to be the parcel's taxable value.

19. 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.
20. 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	\$69,290
<u>Improvements</u>	<u>\$11,290</u>
Total	\$80,580

3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe 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 June 3, 2019.

Signed and Sealed: June 3, 2019

James D. Kuhn, Commissioner