

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Douglas D. Sunderman,
Appellant,

v.

Stanton County Board of Equalization,
Appellee.

Case Nos: 18A 0190, 18A 0191, 18A 0198
& 18A 0199

Decision and Order
Affirming the Determinations of the
Stanton County Board of Equalization

Background

1. The Subject Property comprises four agricultural parcels with legal descriptions of 3 22 1E NW 3-22-1 Union Creek Precinct (18A 0190), 3 22 1E PT NW NE 3-22-1 Union Creek Precinct (18A 0191), 34 23 1E SW 34-23-1 Elkhorn Precinct (18A 0198), and 34 23 1E PT SE 34-23-1 Elkhorn Precinct (18A 0199).
2. The Stanton County Assessor (the County Assessor) assessed the four parcels of the Subject Property at \$813,530 (18A 0190), \$158,915 (18A 0191), \$788,915 (18A 0198), and \$722,055 (18A 0199) for tax year 2018.
3. The Taxpayer protested these values to the Stanton County Board of Equalization (the County Board) and requested assessed values of \$645,114 (18A 0190), \$123,796 (18A 0191), \$639,360 (18A 0198) and \$584,055 (18A 0199) for tax year 2018.
4. The County Board determined that the taxable values of the Subject Property was the same as the values determined by the County Assessor for each parcel of the Subject Property for tax year 2018.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on May 30, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Douglas D. Sunderman and Renee Sunderman were present at the hearing.
8. Cheryl Wolverton, the County 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

¹ Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

10. The Commission's review of the determination of the County Board of Equalization is de novo.²
11. If the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the Commission shall deny the appeal. 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.³
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁴
13. The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁵
14. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁶

Findings of Fact & Conclusions of Law

15. The Taxpayer asserted that the Subject Property was overvalued as compared to other similar parcels in the same area.
16. The Taxpayer presented evidence of the sale prices and acre sizes of four parcels with a majority use of irrigated cropland. However, these sales were from neighboring Madison County and are not directly applicable to valuations in Stanton County.
17. The County Assessor presented the Property Record Files (PRFs) for the Subject Property. She also stated that the Subject Property was valued on a per acre basis determined by land use and land capability grouping (LCG).⁷ She stated that these per acre values were applied uniformly throughout the market area in which the Subject Property is located.
18. Neither party produced PRFs of comparable properties in Stanton County.
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.

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).

³ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁴ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁵ 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).

⁶ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

⁷ An LCG is "a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management." Neb. Admin. Code, Ch. 14 § 004.08E

20. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 are affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:
 - \$813,530 in Case No. 18A 0190;
 - \$158,915 in Case No. 18A 0191;
 - \$788,915 in Case No. 18A 0198; and
 - \$722,055 in Case No. 18A 0199.
3. This Decision and Order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton 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 July 2, 2019.

Signed and Sealed: July 2, 2019

Robert W. Hotz, Commissioner