

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gene Nielsen Trust, Matt A. Nielsen,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 19A 0028

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is 420.02 acres of agricultural land with various improvements, with a legal description of: LTS 1-2-3-4-5 EX TR 256.69 ACCR 4-13-38 163.33A. 1A-O----16 S-T-R 04-13-38.
2. The Keith County Assessor (the Assessor) assessed the Subject Property at \$734,930 for tax year 2019.
3. Gene Nielsen (the Taxpayer) protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$1,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$697,685 for tax year 2019.
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 July 15, 2020, at Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Matt A. Nielsen was present at the hearing for the Taxpayer.
8. Randy Fair (the County Attorney) and Ranae Zink (the 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 a determination of the County Board of Equalization is de novo.²

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).

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 stated the Subject Property is a six-generation farm in the South Platte River valley. The Taxpayer asserted that agricultural land in the North Platte River valley is assessed substantially lower than land in the South Platte River valley. The Taxpayer contended agricultural land in the North Platte River valley has more nutrient rich grass, natural springs, wet meadows and numerous irrigation pivots, whereas the Subject Property located in the South Platte River valley is a narrow valley that is not conducive to full sized irrigation pivots, so tow line irrigation is needed to get water to the crops. The Taxpayer explained that the two river valleys are only nine miles apart and have similar soil types, yet the North Platte River valley has lower assessed values than the South Platte River valley.
17. The Taxpayer did not challenge the assessed value of the improvements to the Subject Property.
18. The Taxpayer provided evidence of sales intended to highlight his assertion that the Subject Property is being valued in excess of its market value.

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).

19. The Assessor stated that the sales provided by the Taxpayer were from a different market area and county than the Subject Property.
20. The Assessor noted there are three different market areas in Keith County. The Assessor has analyzed sales from each market area and developed values for each LVG (Land Valuation Group). The Assessor testified that sales prices for agricultural land are higher in the South Platte River valley than in the North Platte River valley.
21. The Commission did not receive any evidence that other land in the same market area as the Subject Property was not being valued uniformly with the Subject Property. Sales from different market areas and different counties are not persuasive evidence that the Subject Property is being valued unfairly.
22. 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.
23. 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.

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$490,890
<u>Improvements</u>	<u>\$206,795</u>
Total	\$697,685

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith 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 2019.
7. This Decision and Order is effective on September 18, 2020.

Signed and Sealed: September 18, 2020

James D. Kuhn, Commissioner