

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Southern Hills Ranch II LLC,  
Appellant,

v.

Blaine County Board of Equalization,  
Appellee.

Case No: 19A 0067

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is agricultural with improvements, with a legal description of: All 24-24-25 (640).
2. The Blaine County Assessor (the Assessor) assessed the Subject Property at \$980,811 for tax year 2019.
3. Southern Hills Ranch II LLC (the Taxpayer) protested this value to the Blaine County Board of Equalization (the County Board) and requested an assessed value of \$882,731 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$980,811 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 13, 2020, at Custer County Judicial Center, 604 Heritage Dr., Broken Bow, Nebraska, before Commissioner James D. Kuhn.
7. Donald C. Fricke was present at the hearing for the Taxpayer.
8. April Warren (the Assessor) and Glenn Clark (County Attorney) 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.<sup>1</sup>
10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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.”<sup>3</sup> That presumption “remains until

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

1. The Taxpayer stated the Subject Property are being overvalued as evidenced in the Nebraska Farm Real Estate Market Highlights (NFREMH). The Taxpayer stated the NFREMH shows a decline in value for grazing land of 16%, hayland 40%, and irrigated cropland 19% over the 2015 to 2019 period. The Taxpayer stated there was a sale of grazing land in section 20-24-23 for \$700 per acre for a 100 acre tract of land. No property record file of this sale was provided as evidence.
2. The Taxpayer attributed the declining land values to the lower commodity prices for corn and cattle. The Taxpayer stated grazing land was worth \$745 per acre in 2015, whereas the land was worth \$640 per acre in 2018. No evidence of sales in Blaine County were provided to the Commission to verify these claims.
3. The Assessor stated there were higher sale prices for land in 2015 compared to more recent sales. The Assessor has not seen much change in agricultural land sales prices for the 2017 through 2019 period. The Assessor has talked with local independent appraisers and they agree that land values for the most part have remained steady.
4. The Assessor stated there were some changes to acre counts and land values. The Property Assessment Division issued some changes to some Land Valuation Groups (LVG) that may have impacted the Subject Property. There were not enough sales to see any downward trend in agricultural land values.

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<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

5. During the Assessor's review for this appeal, she found incorrect data in the land value. The Farmsite value was incorrectly valued at \$40,500 when it should be valued at \$11,610. The Commission agrees the land value for the 2019 tax year should be corrected.
6. Land value correction is as follows: \$40,500 - \$11,610 = \$28,890. \$690,229 - \$28,890 = \$661,339.
7. No information was given to the Commission regarding any of the improvements on the Subject Property and the Taxpayer stated his only issue was with the land valuation.
8. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
9. The Taxpayer has 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$661,339
<u>Improvements</u>	<u>\$290,582</u>
Total	\$951,921

3. This Decision and Order, if no further action is taken, shall be certified to the Blaine County Treasurer and the Blaine 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 August 14, 2020.

Signed and Sealed: August 14, 2020

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James D. Kuhn, Commissioner