

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Eric W. Limoges,
Appellant,

v.

Howard County Board of Equalization,
Appellee.

Case No: 19A 0080

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling on 35.20 acres, with a legal description of: (KLE TWP) (#45-1) Tract in NW1/4 22-14-12 (35.20 Acres).
2. The Howard County Assessor (the Assessor) assessed the Subject Property at \$184,069 for tax year 2019.
3. Eric W. Limoges (the Taxpayer) protested this value to the Howard County Board of Equalization (the County Board) and requested an assessed value of \$133,582 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$180,899 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 6, 2020, at 111 Public Safety Drive, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Eric W. Limoges was present at the hearing.
8. Neal Dethlefs, 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 a 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 sufficient competent evidence to justify its action.”³ That presumption “remains until

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).

³ *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.”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 that no improvements have been made to the Subject Property to warrant any increase. The residence on the Subject Property is a 600 square foot structure with one bedroom with a ¾ bath and no kitchen other than a sink with minimal cabinets. The Taxpayer resides on the property and had plans to eventually demolish the residence and build a new home. The Taxpayer stated the Subject Property is heated by plug-in electric heat or a wood stove and only has one window air conditioner.
17. The Assessor stated the increase in improvement value to the Subject Property was due to a small building referred to as the “flag cabin” not being recorded on the property record file (PRF) and being added for the 2019 tax year. The “flag cabin” was found during a 2018 review of rural residential properties in Howard County.
18. The Taxpayer stated his land was being valued differently than other similar land types. As an example, the Taxpayer stated the agland inventory table on his PRF showed a soil symbol of 8870 (Hord Silt Loam) and comparable properties that had this same soil symbol but were being assessed a different value per acre.
19. The Assessor agreed the Taxpayer’s land was being valued at a different price per acre than some of his comparables. The Assessor asserted the Subject Property is not an agricultural property and does not qualify for the discount given to agricultural parcels (75% of actual value). Instead, the Subject Property is classified as rural residential with

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).

majority use as residential and is being valued at 100% of the value per acre for the corresponding soil symbol. As an example, the 8870 soil symbol is valued at \$2,000 per acre for rural residential properties and is valued at \$1,500 per acre for agricultural properties (or 75% of \$2,000).

20. The Assessor stated the comparable properties provided by the Taxpayer are not good comparables; some are in different market areas of the county. The Assessor stated that the Subject Property was purchased for \$237,500, which is more than its current assessment, even when subtracting \$39,850 of personal property. The Assessor said it is sales like this, where the purchase prices are higher than the assessed value, that led to the review of rural residential properties in 2018.
21. 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.
22. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$101,970
<u>Improvements</u>	<u>\$ 78,929</u>
Total	\$180,899

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

James D. Kuhn, Commissioner