

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Phillip Bartle,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case Nos: 19A 0111, 19A 0112, 19A 0113
& 19A 0114

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Properties are Agricultural land with farm sites, with legal descriptions of:

19A 0111	19A 0112	19A 0113	19A 0114
TR B in W1/2 1-12-41 144.77A	TR E in S1/2 1-12-41 70.79A	SE1/4 9-12-38 163.98A	SE1/4 & TR in SW1/4 NE1/4 & TR in SE1/4 NW1/4 & TR in E1/2 SW1/4 14-12-41 240.86A

2. The Keith County Assessor (the Assessor) assessed the Subject Properties at:

19A 0111	19A 0112	19A 0113	19A 0114
\$663,280	\$208,480	\$609,825	\$848,295

for tax year 2019.

3. Phillip Bartle (the Taxpayer) protested these values to the Keith County Board of Equalization (the County Board) and requested assessed values of:

19A 0111	19A 0112	19A 0113	19A 0114
\$596,005	\$148,245	\$587,115	\$836,370

for tax year 2019.

4. The County Board determined that the taxable value of the Subject Properties was:

19A 0111	19A 0112	19A 0113	19A 0114
\$656,290	\$159,225	\$609,825	\$848,295

for tax year 2019.

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 July 15, 2020, at Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Phillip Bartle was present at the hearing.
8. Randy Fair (the County Attorney) and Renae 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
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 one of the issues is with the grain bins on the Subject Properties. They are all the same size and should have the same value, yet they each have different assessed values. The Assessor stated the grain bins were measured by different field appraisers who could have come up with slightly different measurements or had differences in rounding that would cause the minor differences in assessed values. The

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).

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).

Assessor stated the Taxpayer did not provide any information to her about the measurements of the grain bins.

17. The Taxpayer provided a spreadsheet with comparable grain bins showing similar sized grain bins that are valued differently than the grain bins on the Subject Property. The Taxpayer did not provide any Property Record Files (PRF) for the comparable grain bins. Without the PRF the Commission is unable to verify the stated information on the spreadsheet.⁹
18. The Taxpayer's second issue is with the value of the hay shed. The Taxpayer stated the hay shed was built with used material except the roof and cost about \$16,000 or \$17,000. The Taxpayer claimed there are no exact comparable properties for the hay shed but did provide a spreadsheet with five comparable properties. The Assessor stated that four of the comparable properties are utility buildings and not considered comparable; the fifth comparable is the most similar and is valued higher than the Subject Property's hay shed.
19. The Taxpayer did not provide any Property Record Files (PRF) for the comparable properties. Without the PRF the Commission is unable to verify the stated information on the spreadsheet.
20. The Taxpayer asserted that he is being assessed for an 8'x20' shipping container, yet another Keith County landowner named Tom Jehurek has three and none of them are being assessed. The Taxpayer stated other neighbors also have shipping containers that aren't being assessed. The Assessor stated metal storage containers are being assessed in Keith County; some may not be assessed because they have not been picked up by review yet or no permit was taken out to alert the Assessor's office to the added improvement.
21. The Taxpayer did not provide any Property Record Files (PRF) for the comparable properties that have storage containers without value. Without the PRF the Commission is unable to verify the stated information.
22. The Assessor made recommendations to the County Board to lower the improvement values due to new information on cases 19A 0111 and 19A 0112.
23. 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.
24. 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

⁹ The Order for Single Commissioner Hearing and Notice issued to the Taxpayer on June 2, 2020, includes the following:
NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 are affirmed.
2. The taxable value of the Subject Properties for tax year 2019:

19A 0111	19A 0112	19A 0113	19A 0114
\$656,290	\$159,225	\$609,825	\$848,295

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 January 5, 2021.

Signed and Sealed: January 5, 2021

James D. Kuhn, Commissioner