

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Marlan D. Johnson,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19A 0088

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is agricultural land, with a legal description of: S13, T11, R8, 6th Principal Meridian, Lots 29 & 32 SW.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$238,000 for tax year 2019.
3. Marlan Johnson (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested a lower valuation for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$238,000 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 August 26, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Marlan D. Johnson was present at the hearing.
8. Tim Sealock (the Appraiser) 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 there is competent evidence to the contrary presented, and the presumption disappears

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).

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 he purchased the Subject Property in 2016 for \$305,000. The purchase price was based off an appraisal done by Dean C. Batie of United Farm & Ranch Management in October 2015. The Taxpayer stated the County Board of Equalization lowered his assessment to 75% of the appraisal value.
17. The Taxpayer provided a photo of a spreadsheet showing nine comparable agricultural properties whose values decreased around 8% from the previous year. The Taxpayer requested that the assessed value of the Subject Property be set at 75% of the appraisal plus another 8% reduction that the comparable properties received.
18. The Appraiser stated that the County Board adjusted the assessed value of the Subject Property in 2016. The manner in which the County Board valued the Subject Property in 2016 was not correct, caused disequalization among agricultural properties, and was not a reflection of how every other agricultural parcel in Lancaster County was being valued. The assessed value should have been corrected in 2017, but it was missed until the 2019 tax year.
19. The Appraiser stated agricultural land is valued on use and soil type, not on marketability. The Appraiser stated the Taxpayer’s comparable properties could have had different use or soil types than the Subject Property. The Taxpayer did not provide any property record files (PRF) for the Commission to determine whether the comparable properties were of the same soil composition and use as the Subject Property.

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).

20. 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.
21. 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	\$238,000
<u>Improvements</u>	<u>\$ 0</u>
Total	\$238,000

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 8, 2021.

Signed and Sealed: January 8, 2021

James D. Kuhn, Commissioner