

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kelly Kinkade,
Appellant,

v.

Red Willow County Board of Equalization,
Appellee.

Case No: 19R 0009

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is 2.75 acres that are improved with outbuildings, with a legal description of: Perry Precinct 1-3-30 PT NE/4SE 2.75 acres.
2. The Red Willow County Assessor (the Assessor) assessed the Subject Property at \$13,750 for tax year 2019.
3. Kelly Kinkade (the Taxpayer) protested this value to the Red Willow County Board of Equalization (the County Board) and requested an assessed value of \$5,500 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$34,005 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 16, 2020, at Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Kelly Kinkade was present at the hearing.
8. Philip P. Lyons (the Deputy County Attorney) and Kristi Korell (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

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).

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 he isn’t getting adequate road care and rural fire protection for the amount he pays in taxes. The Taxpayer noted he had to take care of his own road to the Subject Property.
17. The Taxpayer stated the land should be valued as agricultural land like it was in the past. The Taxpayer asserted the trees on the Subject Property could be sold although no trees have been sold for at least the past three years.
18. The Taxpayer asserted there is a lack of access to the Subject Property. The current access to the Subject Property is through a parcel of ground owned by family of the Taxpayer, which might not always be usable as there is no easement in place for this access. The Assessor provided an aerial photo of the Subject Property which is adjoining the Taxpayer’s property in which his home is located. It appears as though there is access from the Taxpayer’s adjoining parcel to the Subject Property.
19. The Taxpayer stated the use of the Subject Property was primarily to park his truck and do maintenance work on his semi.
20. The Assessor stated the Subject Property has never been valued as agricultural land to her knowledge. The increase in land value was a revalue of residential land for the 2019 tax

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).

year. The previous land value was \$2,000 per acre but the value was increased to \$5,000 per acre for 2019 due to sales showing an increase in sale prices.

21. The improvement value added to this parcel at the County Board meeting was due to a detached garage, a carport and a flat value shed, which were incorrectly being valued on an adjoining parcel also owned by the Taxpayer. The Assessor moved them to the Subject Property to correct the error
22. The Assessor argued the primary use of the Subject Property was for parking and working on the semi owned by the Taxpayer, and therefore agriculture is not its primary use.
23. The Commission was not convinced the parcel has any agricultural usage; rather, it is used primarily as a place to park and work on equipment. The Taxpayer did not provide any comparable sales to show the Subject Property is being valued unfairly. The Taxpayer's assertion that he is not getting the road maintenance and fire protection he feels he is paying for does not fall within the jurisdiction of the Tax Equalization and Review Commission.
24. 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.
25. 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	\$13,750
<u>Improvements</u>	<u>\$20,255</u>
Total	\$34,005

3. This Decision and Order, if no further action is taken, shall be certified to the Red Willow County Treasurer and the Red Willow 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 30, 2020.

Signed and Sealed: September 30, 2020

James D. Kuhn, Commissioner