

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Matthew C. Kuskie,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 20A 0002

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
KEITH COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a vacant rural residential parcel with a legal description of TR S of I-80 20-13-40 4.71A.
2. The Keith County Assessor assessed the Subject Property at \$20,210 for tax year 2020.
3. Matthew C. Kuskie (the Taxpayer) protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$1,320 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$20,210 for tax year 2020.
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 February 7, 2022, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Matthew C. Kuskie was present at the hearing.
8. Amanda Harger (the Deputy Assessor) and Randy Fair (Legal Counsel) 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 Subject Property is a vacant 4.71 acres that adjoins another parcel owned by the Taxpayer that contains the Taxpayers home and other improvements. The Taxpayer stated the Subject Property is where the septic and sewer for his home is located, no improvements are on the Subject Property. The assessment of the Subject Property had been \$1,320 for the past ten years and the Taxpayer doesn’t feel as though the property is now worth \$20,210.
17. The Taxpayer stated there is occasional flooding on the Subject Property as well as being land locked and stated he could not sell the property. The Taxpayer wants the Subject Property combined with the parcel containing his residence.
18. The Deputy Assessor stated the Subject Property had been valued as though it was excess land to the Taxpayer’s main parcel containing his residence. However, the Subject Property is in a different section from the Taxpayer’s main parcel so they cannot be combined into one parcel per Nebraska Administrative Code.⁹
19. The Deputy Assessor stated there are vacant land sales that are used in valuing rural vacant land like the Subject Property. The Deputy Assessor stated the parcel could be accessed by a nearby county road that services the Taxpayer’s main parcel. The Deputy

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).

⁹ “A parcel cannot contain more than one section.” 350 Neb. Admin. Code Ch. 14 § 002.57.

Assessor stated she was unaware of the flooding issue mentioned by the Taxpayer and did not know if the Subject Property was in a flood plain.

20. The Taxpayer did not provide any evidence showing the Subject Property was being valued differently than other rural vacant land and did not show what effect the occasional flooding had on the market value of the Subject Property.
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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$20,210
<u>Improvements</u>	<u>\$ 0</u>
Total	\$20,210

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 2020.
7. This Decision and Order is effective on April 5, 2022.

Signed and Sealed: April 5, 2022

James D. Kuhn, Commissioner