

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Milton Stoppkotte Revocable Trust,  
Milton H. Stoppkotte, Trustee,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 20A 0060

**DECISION AND ORDER  
REVERSING THE DECISION OF THE  
HALL COUNTY BOARD OF  
EQUALIZATION**

Background

1. The Subject Property is an agricultural parcel with a legal description of Lake TWP PT NE1/4 24-12-9 160.05 AC.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$755,380 for tax year 2020.
3. Milton Stoppkotte Revocable Trust, Milton H. Stoppkotte, Trustee (the Taxpayer), protested this value to the Hall County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$679,842 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 June 16, 2021, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Milton Stoppkotte was present at the hearing for the Taxpayer.
8. Sarah Carstensen (the County Attorney) and Kristi Wold (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.<sup>1</sup>
10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Supp. 2020).

<sup>2</sup> 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, 759 N.W.2d 464, 473 (2009).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer purchased the Subject Property in April of 2019 after negotiations with the seller. The Subject Property had been advertised, the asking price lowered, and the Taxpayer’s offer below the reduced asking price was accepted.
17. At the time of purchase, the Taxpayer was fully aware of the power line that ran through the center of the property that would make a single center pivot irrigation system impossible. But the ground was good farm ground and the Taxpayer believed that the power line would not be an issue because they planned to install a subsurface drip irrigation system. After the Subject Property was purchased, water tests revealed a subsurface drip irrigation system would not be feasible due to poor water quality. Due to the power line making a single center pivot not possible, the Subject Property would need to have two center pivot irrigation systems installed at essentially twice the cost. Pipe irrigation is currently used on the Subject Property, and no pivot irrigation has been built.
18. The Assessor stated that in the initial assessment, the Subject Property was valued equally to all other irrigated land in Hall County since there is only one agricultural land market area. Upon the Taxpayer’s protest, the County Board lowered the assessed value of the Subject Property.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. The Commission inquired as to why the assessed value of the Subject Property was lowered. The Assessor explained the County Board lowered the assessed value 15% because of the utility poles running through the center of the property. The Commission asked if the Assessor or the County Board had any evidence of sales or otherwise that agricultural properties with utility poles sell for 15% less than properties without utility poles. The Assessor stated they had none. The Commission asked if other agricultural properties in Hall County had utility poles running through them. The Assessor stated that there were and that no similar discounts or reductions were made to the assessed values of those properties.
20. Real property must be taxed “by valuation uniformly and proportionately.”<sup>9</sup> Uniformity is only accomplished if all taxable property in a taxing jurisdiction is “assessed and taxed at a uniform standard of value.”<sup>10</sup> The Commission finds the County Board’s 15% reduction in assessed value of the Subject Property created a non-uniform assessment.
21. A county board of equalization has a “duty to correct and equalize individual discrepancies and inequalities in assessments.”<sup>11</sup> “A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion.”<sup>12</sup> The Commission finds the decision of the County Board made in the absence of any evidence that would warrant a 15% downward adjustment was arbitrary.
22. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and act on sufficient competent evidence to justify its actions.
23. The Taxpayer has 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 vacated.

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 reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$755,380
<u>Improvements</u>	<u>\$ 0</u>
Total	\$755,380

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<sup>9</sup> Neb. Const. art. VIII § 1(1).

<sup>10</sup> *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000) (citation omitted).

<sup>11</sup> *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 358, 835 N.W.2d 750, 754 (2013).

<sup>12</sup> *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 462, 640 N.W.2d 398, 405 (2002).

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

Signed and Sealed: July 8, 2021

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James D. Kuhn, Commissioner