

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

KKES INC.
APPELLANT,

CASE NOS: 20A 0062 , 21A
0181, 22A 0158

V.

ANTELOPE COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE ANTELOPE COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property consists of an agricultural parcel in Antelope County, parcel number 000516400.
2. The Antelope County Assessor (the County Assessor) assessed the Subject Property at \$387,295 for tax year 2020, \$372,365 for tax year 2021, and \$399,650 for tax year 2022.
3. KKES Inc. (the Taxpayer) protested these values to the Antelope County Board of Equalization (the County Board) and requested assessed values of \$310,645 for tax year 2020, \$310,862 for tax year 2021. and \$264,088 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$375,260 for tax year 2020, \$372,365 for tax year 2021, and \$399,650 for tax year 2022.
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 10, 2023, at Divots Conference Center, 4200 West Norfolk Ave, Norfolk, NE, before Commissioner James D. Kuhn.
7. Larry E. Socha, Ronald E. Temple, and Preston Koehler were present at the hearing for the Taxpayer.

8. Joe Smith was present for the County Board.

II. 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 759 N.W.2d 464, 473 (2009).

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

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer asserted the value of the Subject Property is excessive because of low yields from the property.
17. The Taxpayers presented documentation about yields in Nebraska and testimony from an employee and two farmers confirming the yields on the Subject Property were below average.
18. The Taxpayer asserted the value of Subject Property would be more appropriate if the assessor would make spot adjustments to parts of the Subject Property to lower values.
19. The Taxpayer asserted the Land Capability Groups (LCGs) could be incorrect in the assessment of the Subject Property.
20. The County Assessor testified the yields produced on agricultural property are not a factor in determining value.
21. The County Assessor testified she used appropriate mass appraisal procedure.
22. The County Assessor testified spot adjustment are not used in property assessment, with the exceptions of two federally

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

- controlled areas, because spot adjustments would dis-equalize the adjusted parcel, and instead the value is based on sales.
23. The County Assessor testified she does not have the authority to change the LCGs of the Subject Property, as the LCGs are set by the Property Assessment Division (PAD) of the Nebraska Department of Revenue.
 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 determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2020, 2021, and 2022 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 is:

Total	\$375,260
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3. The taxable value of the Subject Property for tax years 2021 is:

Total	\$372,365
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4. The taxable value of the Subject Property for tax years 2022 is:

Total	\$399,650
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5. This Decision and Order, if no further action is taken, shall be certified to the Antelope County Treasurer and the Antelope County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2020, 2021, and 2022.
9. This Decision and Order is effective on October 27, 2023.

Signed and Sealed: October 27, 2023



James D. Kuhn, Commissioner