

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Roger E. Trew,
Appellant,

v.

Harlan County Board of Equalization,
Appellee.

Case No: 20A 0086

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

Background

1. The Subject Property is a parcel with a legal description of FCL. E1/2 SE1/4 2-1-17 East and West.
2. The Harlan County Assessor (the County Assessor) assessed the Subject Property, classified as residential, at \$37,060 for tax year 2020.
3. Roger E. Trew (the Taxpayer) protested this value to the Harlan County Board of Equalization (the County Board), asserting that the parcel should be classified as agricultural land, and requested an assessed value of \$12,930 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$29,492 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 14, 2021, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Roger Trew was present at the hearing for the Taxpayer.
8. Bryan McQuay (the Harlan County Attorney) and Kim Fouts (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

¹ Neb. Rev. Stat. § 77-1301(1) (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).

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
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. To be classified as agricultural land a parcel must be used primarily for agricultural purposes.⁸
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

17. The Taxpayer stated that alfalfa and grass hay have been planted and harvested on the Subject Property. As evidence, the Taxpayer produced two receipts from different farmers for the cutting of alfalfa and grass hay during 2012 and 2019. The Taxpayer stated a majority of the parcel could be converted to agricultural purposes but that such a conversion would be cost-prohibitive because of the amount of work that would be required.
18. The Taxpayer stated the Subject Property has no water source because the well went bad about three years ago. The Taxpayer stated the Subject Property has electricity. The Taxpayer stated that the Subject Property is currently mostly habitat and recreational as walking trails have been mowed throughout the Subject Property.
19. The Assessor stated that since 2004 the Subject Property had been continually assessed as Rural Residential. The Assessor stated that less than 10-acre acreages are very popular

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. § 77-1359 (Reissue 2018).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

for building sites, especially ones in close proximity to Harland Reservoir, as the Subject Property is. The Assessor stated the Subject Property is not usable for farming due to the number of trees present on the parcel.

20. The Assessor stated the County Board of Equalization gave one acre of grass classification to the Subject Property to account for the small portion of the parcel being cut for alfalfa and grass hay. Further, the limited water and power available on the Subject Property were accounted for by valuing the first acre at \$10,000 instead of the normal \$20,000 first acre value for Rural Residential parcels with water and electricity.
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: **\$29,492**.
3. This Decision and Order, if no further action is taken, shall be certified to the Harlan County Treasurer and the Harlan 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

James D. Kuhn, Commissioner