

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Six Diamonds Ranch,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 20A 0123

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

Background

1. The Subject Property is an improved agricultural parcel with a legal description of TR (B) in W1/2 1-12-41 144.77A.
2. The Keith County Assessor assessed the Subject Property at \$647,920 for tax year 2020.
3. Six Diamonds Ranch (the Taxpayer) protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$591,670 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$646,150 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 July 15, 2021, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Dan Archer was present at the hearing for the Taxpayer.
8. Renae Zink (the 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 sufficient competent evidence to justify its action.”³ That presumption “remains until

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).

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

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’s main issue is with the improvement values of the hay shed and the two grain bins on the Subject Property. The Taxpayer did not contest the land value portion of the assessment.
17. The Taxpayer stated the hay shed is nothing more than some poles and some tin. The Taxpayer provided a spreadsheet with comparable properties; however, only one is nearly identical to the Subject Property, with year built being the only difference. The Assessor stated the depreciation for age was the difference in value between the two hay sheds. The Commission is not convinced that the hay shed is valued incorrectly or disproportionately to other similar property.
18. The Taxpayer stated the two grain bins on the Subject Property are the same as four other grain bins on parcels the Taxpayer referred to as the Bartle and Jehorek properties. The Taxpayer stated Bartle constructed the grain bins on all the parcels and they were all built with the same materials and same exact dimensions.
19. The Taxpayer provided a spreadsheet with the information about the grain bins taken from the assessor’s web page showing dimensions, units, replacement cost new and depreciation of the bins on the Bartle, Jehorek and Subject properties. The Taxpayer stated the assessor has incorrect dimensions for three of the grain bins.

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).

20. The Assessor stated the grain bins were inspected and measured by her appraisal staff, and those measurements may vary depending on how each person measured. The information gathered by the appraisal staff was used to value each of the grain bins.
21. The Assessor determined that each of the grain bins on the Subject Property had a replacement cost new less depreciation (RCNLD) of \$37,325. The Assessor then applied a 20% blanket increase to all residential and agricultural/horticultural improvements in the county. Following this increase, the assessed value of each grain bin was \$44,790.
22. The Assessor determined that the grain bin on the property of the Purcell Conservation Group (i.e., the Jehorek property) had an RCNLD of \$36,020. When the 20% blanket increase is applied, this bin would have an assessed value of \$43,224.
23. The Commission is convinced the grain bins on the Subject Property are the same as the grain bins on the comparable properties, including the Jehorek property. Because the grain bins are the same, they should be assessed equally at \$43,224 each.⁹ Thus, the total improvement value on the Subject Property should be \$119,604.¹⁰
24. The Taxpayer has 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 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$523,415
<u>Improvements</u>	<u>\$119,604</u>
Total	\$643,019

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.

⁹ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁰ \$43,224 x 2 = \$86,448 for the grain bins. \$27,630 x 120% = \$33,156 for the hay shed (including the 20% increase). \$86,448 + \$33,156 = \$119,604.

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 December 30, 2021.

Signed and Sealed: December 30, 2021

James D. Kuhn, Commissioner