

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Myron J. Bender,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case No: 20A 0126

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

Background

1. The Subject Property is an agricultural parcel with a legal description of That PT of E1/2 15-13-32 Lying Northerly of NPPD Canal ROW 186.56 +/- Acres.
2. The Lincoln County Assessor assessed the Subject Property at \$269,366 for tax year 2020.
3. Myron J. Bender (the Taxpayer) protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$170,454 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$269,366 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. Myron J. Bender was present at the hearing.
8. Julie Stenger (the Assessor) was 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 stated he purchased the Subject Property for less than the current assessment, and it was advertised by a realtor for less than the assessed value.
17. According to a map provided by the Taxpayer, the Subject Property is in Lincoln County Market Area 1, at or near the border between Market Areas 1 and 3. The information presented to the Commission indicates that per acre values for agricultural land are higher in Market Area 1 than in Market Area 3.
18. The Taxpayer stated the Subject Property should be in Market Area 3 instead of Market Area 1. The Taxpayer believes the Subject Property is most similar to Market Area 3 properties when comparing soil types. The Taxpayer discussed eight properties that are nearby that he feels are comparable to the Subject Property.
19. The Taxpayer stated that two of the comparable properties were in Market Area 1 with the Subject Property but were being valued using Market Area 3 land values. The Taxpayer’s map shows these two parcels, 0080127.00 and 0080140.00, in Market Area 1.
20. The Taxpayer provided information about these properties printed off the county website, but he did not provide property record files (PRF) from the assessor’s office.⁹ The

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 The Order for Single Commissioner Hearing and Notice issued to the Taxpayer on March 5, 2021, includes the following:

NOTE: *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property*

information from the website indicates that all of the comparable properties, including parcel numbers 0080127.00 and 0080140.00, are located in Market Area 3, with the Subject Property being the only property in Market Area 1.

21. Thus, some of the information presented (Taxpayer's map) indicates that parcel numbers 0080127.00 and 0080140.00 are located in Market Area 1, but other information presented (Taxpayer's website printouts) indicates that those parcels are located in Market Area 3. Additionally, the parcels are assessed at the correct per acre values for Market Area 3. The Taxpayer did not provide the PRF for those parcels, which would have been the best evidence as to which market area they are in. The Commission is not convinced that these comparable properties are located in Market Area 1.
22. The Assessor stated the Subject Property is most like other parcels in Market Area 1. The Assessor stated the biggest determining factor in developing market areas was the difference in soil types. The Assessor stated that changes to the land valuation groups (LVG) were done in accordance with new legislation in 2019. The Assessor stated the Subject Property is being valued equally with all other agricultural parcels in Market Area 1.
23. The Commission does not have any evidence to show that the Subject Property was being valued differently than other agricultural properties in Market Area 1 for the 2020 tax year.
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 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: **\$269,366**
3. This Decision and Order, if no further action is taken, shall be certified to the Lincoln County Treasurer and the Lincoln 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.

record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

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 29, 2021.

Signed and Sealed: December 29, 2021

James D. Kuhn, Commissioner