

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Upwind Science Inc.,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case Nos: 20A 0251 & 20A 0252

**DECISION AND ORDER
AFFIRMING THE DECISIONS OF THE
CASS COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Properties consist of an agricultural parcel and an agricultural parcel with improvements, with legal descriptions of 09-11-14 LTS 2 3 & 4 & SL2 of GOV L2 SW1/4 NW1/4 (117.23) (Case No. 20A 0251) and 08-11-14 LTS 2 & 14 SE1/4 NE1/4 (21.62) (Case No. 20A 0252).
2. The Cass County Assessor assessed the Subject Properties at \$460,045 (Case No. 20A 0251) and \$84,945 (Case No. 20A 0252) for tax year 2020. The Taxpayer timely filed a protest of the assessed values.
3. On July 10, 2020, the Cass County Board of Equalization issued a Notice of Valuation Change pursuant to Neb. Rev. Stat. §§ 77-1504 or 77-1507, setting the assessed values of the Subject Properties at \$433,529 (20A 0251) and \$76,287 (20A 0252) for tax year 2020.
4. Upwind Science Inc. (the Taxpayer) protested these values to the Cass County Board of Equalization (the County Board).
5. The County Board determined that the taxable value of the Subject Properties was \$425,909 (20A 0251) and \$76,287 (20A 0252) for tax year 2020.
6. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on February 11, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
8. Eric Burr was present at the hearing for the Taxpayer.
9. Teresa Salinger (the Assessor) was present for the County Board.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

11. The Commission’s review of a determination of the County Board of Equalization is de novo.²
12. 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
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

17. The Taxpayer purchased the two Subject Properties in 2019 for a total of \$452,000. The Taxpayer stated the purchase price should be the value the property is assessed at. The Taxpayer stated he took a risk with the purchase as the home had been flooded in 2019 and part of the cropland had standing water in December 2019. The Taxpayer stated the cropland portion of the Subject Properties had lower crop yields in 2020 due to issues with the flooding in 2019.
18. “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive

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).

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).

of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”⁹

19. The Taxpayer stated the basement of the home had been flooded and was not refinished, and the furnace was replaced with central air for the 2020 tax year. The basement was not finished until the summer of 2021. The Assessor’s property record file (PRF) shows 1,229 square foot of recreational finish in the basement and a heat pump furnace for the 2020 tax year. The Taxpayer also replaced siding and shingles on the home; however, he stated the home was livable as of January 1, 2020.
20. After the initial assessment, the Assessor recommended lowering the land value for the Subject Property in both cases because the land did not receive the discount given to the neighborhood of agricultural land located along the river. This recommendation was accepted by the County Board and is reflected in the reduction of land values from \$337,128 to \$310,612 (20A 0251) and from \$84,945 to \$76,287 (20A 0252) in the Notice of Valuation Change.
21. After the Taxpayer’s protest of the Notice of Valuation Change, the Assessor recommended lowering the improvement value on appeal 20A 0251 because of corrections made to the PRF after review. This recommendation was accepted by the County Board and is reflected in the reduction of the improvement value from \$122,917 to \$111,625 after the Taxpayer’s protest of the Notice of Valuation Change .
22. The Assessor stated the land in both appeals is being valued the same as all other agricultural land within the same county and market area.
23. The Assessor stated the only additional adjustments that could possibly be made are to remove the recreational finish and the heat pump and possibly drop the condition from Fair + to poor if the home was not livable. The Taxpayer stated that the home was livable and rented as of January 1, 2020, so this adjustment to the condition is not warranted.
24. Although a copy of the PRF for the Subject Property was presented, the Commission does not have a line-item value for either the recreational finish or the heat pump and cannot make an adjustment with those unknown values. It was unclear to the Commission if the County Board’s reduction to the improvement value for the Subject Property in Case No. 20A 0251 included removal of the values of the heat pump and recreational finish.
25. 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.
26. 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.

⁹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2020 are affirmed.
2. The taxable value of the Subject Properties for tax year 2020 is:

	20A 0251	20A 0252
Land	\$310,612	\$76,287
Improvement	\$111,645	\$ 0
Outbuilding	\$ 3,652	\$ 0
Total	\$425,909	\$76,287

3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 April 13, 2022.

Signed and Sealed: April 13, 2022

James D. Kuhn, Commissioner