

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Petroleum Company,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case No: 20C 0042

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

Background

1. The Subject Property is a commercial parcel with a legal description of Tax Lots SE1/4 28-24-1 PT Tax Lot 2 Less PT to State.
2. The Madison County Assessor assessed the Subject Property at \$504,643 for tax year 2020.
3. Nebraska Petroleum Company (the Taxpayer) protested this value to the Madison County Board of Equalization (the County Board) and requested an assessed value of \$422,636 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$504,643 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 September 10, 2021, at Divots Conference Center, 4200 W Norfolk Ave, Norfolk, Nebraska, before Commissioner James D. Kuhn.
7. Brad Merchant was present at the hearing for the Taxpayer.
8. Jeff Hackerott (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 the Subject Property is a uniquely shaped property where the front half has an ongoing business on 13th Street (a main thoroughfare) but has a narrow access strip leading to a large undeveloped area in the rear of the parcel. The Taxpayer stated the rear portion of the Subject Property is just grass with difficult access making it less valuable than property fronting 13th Street. The Taxpayer provided a gWorks map outlining the Subject Property and showing the two adjoining properties (both owned by the Taxpayer). The map shows the percentage increase of the two joining parcels as compared to the value increase of the Subject Property. No property record files (PRF) were provided for any of the properties.
17. The Taxpayer stated a similarly situated property, A1 Storage, would be more valuable than the Subject Property since it has storage units and is receiving an income stream.
18. The Assessor stated the Subject Property is being valued in the same manner as all other commercial properties along 13th Street. The Assessor is valuing the land along 13th Street at \$7 per square foot for the first 40,000 square feet then \$6 per square foot for the next 40,000 square feet. The Subject Property is 47,001 square feet per the Assessor’s testimony. The Assessor provided a spreadsheet with commercial sales near the Subject Property showing per square foot purchase prices ranging from \$13.89 to \$22.34.

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).

19. Neither party provided any PRF. The Commission is unable to analyze or review either party's claims about comparable properties or comparable sales without any PRF.⁹
20. 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.
21. 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:

| | |
|---------------------|------------------|
| Land | \$322,007 |
| <u>Improvements</u> | <u>\$182,636</u> |
| Total | \$504,643 |

3. This Decision and Order, if no further action is taken, shall be certified to the Madison County Treasurer and the Madison 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 November 16, 2021.

Signed and Sealed: November 16, 2021

James D. Kuhn, Commissioner

⁹ For this reason, the Order for Single Commissioner Hearing and Notice of Hearing issued to the parties on August 11, 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 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.*