

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michele L. Needs,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case No: 20R 0006

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

Background

1. The Subject Property is a rural residential parcel with a legal description of NE1/4 NW1/4 18-16-27, 40 Acres +/-.
2. The Lincoln County Assessor assessed the Subject Property at \$312,955 for tax year 2020.
3. Michael J. and Michele L. Needs (the Taxpayers) protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$245,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$312,955 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 16, 2021, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Michael J. and Michele L. Needs 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 Taxpayers stated the appeal was about the land valuation of the Subject Property; they had no issue with the improvement value.
17. The Taxpayers stated the Subject Property consists of 40 acres with improvements. The Taxpayers believe the land should be valued as agricultural land as they have livestock on most of the acres. The Taxpayers stated they have about 17 head of cattle on the Subject Property.
18. The Taxpayers stated they had found another property with 63 acres and a home that was being valued less than the Subject Property; however, no property record files (PRF) were provided to the Commission.
19. The Assessor stated the Subject Property’s primary use is residential and that any agricultural usage is incidental. The Assessor asserted the number of acres that could be used for grazing cattle is significantly smaller than what would be needed for a cattle ranching business. The Assessor figured the cattle units that could be raised on the Subject Property’s grassland would be 4 head for a term of 5 months. Due to that fact, the Assessor determined the Subject Property to have a primary use as rural residential.
20. The Assessor stated there is high interest in rural acreages in Lincoln and she has numerous sales of rural acreages which lead her to doing a full rural residential review in 2019 and made adjustments to land values to reflect what the sales were showing.

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).

21. The Taxpayers have 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 Taxpayers have 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	\$ 95,500
<u>Improvements</u>	<u>\$217,455</u>
Total	\$312,955

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.
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 8, 2021.

Signed and Sealed: December 8, 2021

James D. Kuhn, Commissioner