

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Frank J. Kilton, Jr.,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case Nos: 20R 0013 & 20R 0014

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

Background

1. The Subject Property consists of improved parcels with legal descriptions of 25-13-12 L6 & Accretions SW1/4 SW1/4 (5) (20R 0013) & 36-13-12 L24 NW1/4 NW1/4 (2) (20R 0014).
2. The Cass County Assessor assessed the Subject Properties at \$153,420 (20R 0013) and \$51,246 (20R 0014) for tax year 2020.
3. Frank J. Kilton, Jr. (the Taxpayer) protested these values to the Cass County Board of Equalization (the County Board) and requested assessed values of \$99,170 (20R 0013) and \$25,607 (20R 0014) for tax year 2020.
4. The County Board determined that the taxable value of the Subject Properties was \$143,273 (20R 0013) and \$31,107 (20R 0014) for tax year 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 6, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Frank J. Kilton, Jr. was present at the hearing.
8. Cass County Assessor Teresa Salinger (the Assessor) and Dana Long (the Appraiser) 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

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).

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 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 parcel in Case No. 20R 0013 is improved with two cabins, and the parcel in Case No. 20R 0014 is improved with one cabin and a shed. The Subject Properties are predominantly used for recreation. The Subject Property and the cabins are not habitable year-round and only used a portion of the year. The cabins are used for weekend gatherings and summer get-togethers for fishing and other recreational uses. The Subject Properties have been prone to flooding over the years, and if the cabins were destroyed, zoning ordinances would not allow the taxpayer to rebuild them.
17. The Taxpayer stated the land value for the Subject Property is being valued higher than an adjoining parcel owned by the Wehrbeins. The Wherbein property is an unimproved property bordering the Subject Property, which is being valued as recreational land by the Assessor at \$2,650 per acre.
18. The Assessor stated the Subject Property is near the Sun Lakes neighborhood, which is made up of seasonal cabins and permanent residences. The Assessor stated the Taxpayer has improvements on the Subject Property which would take them out of the recreational

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).

classification, and that the primary use of the Subject Property is in the use of the dwellings. The Assessor provided a property record file (PRF) for the Subject Property in which the status is listed as “improved” and the use is listed as “recreational.”

19. According to the regulations of the Nebraska Department of Revenue:

Property parcel type means the predominant use of the parcel at the time of assessment regardless of the parcel’s legal use or zoning.⁹

Recreational means all parcels predominantly used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of these uses are fishing, hunting, camping, boating, hiking, picnicking, or having an access or view that simply allows diversion, entertainment, and relaxation.¹⁰

Single family residential means all parcels predominantly used or intended to be used as a dwelling place or abode whether occupied by the owner, tenant, or lessee; and where occupancy is usually year-round, as opposed to a transitory occupancy.¹¹

20. The Commission is convinced the predominant use of the Subject Property is recreational and the property should be valued as such. The Assessor has a recreational land class with a value of \$2,650 per acre. The Subject Property’s land should be assessed as recreational with a value of \$2,650 per acre. The improvement values were not at issue in these appeals.

21. 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.

22. The Taxpayer has 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 vacated.

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 reversed.
2. The taxable value of the Subject Properties for tax year 2020 is:

⁹ 350 Nebraska Administrative Code Ch. 10 § 002.15.

¹⁰ 350 Nebraska Administrative Code Ch. 10 § 002.15J, emphasis added.

¹¹ 350 Nebraska Administrative Code Ch. 10 § 002.15K, emphasis added.

	<u>20R 0013</u>	<u>20R 0014</u>
Land:	\$13,250	\$ 5,300
Improvement:	<u>\$75,773</u>	<u>\$20,307</u>
Total:	\$89,023	\$25,607

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 November 24, 2021.

Signed and Sealed: November 24, 2021

James D. Kuhn, Commissioner