

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Robert R. Reynolds,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee.

Case No: 20R 0132

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

Background

1. The Subject Property is a residential parcel with a legal description of Lake Home (IOLL) Lot 66 K-1 4&9-14-38 1 A-O----16 S-T-R 09-14-38.
2. The Keith County Assessor assessed the Subject Property at \$850,805 for tax year 2020: \$780,805 for improvements and \$70,000 for land.
3. Robert R. Reynolds (the Taxpayer) protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$450,000 for tax year 2020: \$450,000 for improvements and \$0 for land.
4. The County Board determined that the taxable value of the Subject Property was \$850,805 for tax year 2020, using the same land and improvement values as the County Assessor.
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 14, 2021, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Commissioner James D. Kuhn.
7. Michael Samuelson (Legal Counsel) was present at the hearing for the Taxpayer.
8. Renae Zink (the Assessor) and Randy Fair (Legal Counsel) 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.<sup>1</sup>
10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the leasehold value of the Subject Property should be \$0 as the Taxpayers do not own the land and are paying market rent to Central Nebraska Public Power and Irrigation District (CNPPID) for the land.
17. The Assessor stated the “K” areas of the lake were reviewed for the 2020 tax year. The Subject Property is located in neighborhood K-1. The Assessor stated new land tables, updated costing tables and new depreciation tables were used to reappraise all lake residential properties for the 2020 tax year.
18. The Assessor stated land values for land owned by CNPPID and leased to property owners has 3 tiers. Lake front or good lots are valued at \$100,000, off-lake lots or average lots are valued at \$70,000, and back lots or low lots are valued at \$50,000. The Subject Property is considered a “average” lot and valued at \$70,000.
19. Nebraska law provides that all real property not exempt from taxation is to be valued at its actual value. Nebraska statutes and regulations impose property taxation upon the lessee’s interests in real estate owned by a governmental subdivision. “Property of public

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<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

power districts and irrigation districts that is leased to a private party for purposes other than a public purpose...shall be subject to taxation as if the property was owned by the lessee.”<sup>9</sup> “Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose.”<sup>10</sup> “Income generated for the state or governmental subdivision, either through leases or other receipts, will not convert a nonpublic use of a property to a tax exempt public purpose use.”<sup>11</sup>

20. This issue was addressed by the Nebraska Court of Appeals in *Keith County Bd. of Equal. v. Robert B. Reynolds*.<sup>12</sup> The Taxpayer in the present appeal has not presented persuasive evidence that the lease is at market value or for a public purpose.
21. The Taxpayer asserted that the improvement value of the Subject Property is dramatically higher than fair market value. The Taxpayer did not provide any property record files (PRF) for comparable properties but instead relied on the Assessor’s packet of information for their case. The information received by the Commission does not support a conclusion that the improvement component of the Subject Property is assessed incorrectly or disproportionately as compared with other similar property.
22. 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.
23. 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	\$ 70,000
<u>Improvements</u>	<u>\$780,805</u>
Total	\$850,805

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

<sup>9</sup> 350 Neb. Admin. Code Ch. 41 § 004.07.

<sup>10</sup> Neb. Rev. Stat. § 77-202(1)(a)(ii) (Reissue 2018).

<sup>11</sup> 350 Neb. Admin. Code Ch. 15 § 002.01.

<sup>12</sup> 18 Neb.App. 616, 790 N.W.2d 455.

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 January 25, 2022.

Signed and Sealed: January 25, 2022

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James D. Kuhn, Commissioner