

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard W. Rich,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 20R 0144

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

Background

1. The Subject Property is a residential parcel with a legal description of 32-9-16 PT SE1/4 SE1/4 3.83 Acres.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$45,660 for tax year 2020.
3. Richard W. Rich (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$19,150 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$45,660 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 June 15, 2021, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Richard Rich was present at the hearing for the Taxpayer.
8. Andy Hoffmeister (the County Attorney) and Nora Borer (the Deputy Assessor) 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) (Supp. 2020).

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, 759 N.W.2d 464, 473 (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 Taxpayer stated the Subject Property previously was a landfill and was supposed to be backfilled with two feet of dirt when it was closed. However, the Taxpayer stated that the landfill was never backfilled, and large chunks of concrete are still present and visible on the Subject Property. The Taxpayer provided photos showing large chunks of concrete in a wooded area of the Subject Property.
17. The Taxpayer stated the average value for grazing land in the central portion of Nebraska is \$1,490 per acre and provided an exhibit from Nebraska Farm Real Estate Market Development Survey, 2021, in support.
18. The Deputy Assessor stated the Subject Property was valued as Rural Residential Acreages and not as agricultural land. The Deputy Assessor stated the Taxpayer owns three parcels that all abut but cannot be combined into one taxable parcel because they are in different sections. According to the Deputy Assessor, the County Assessor has made a spot adjustment to the Subject Property: the Subject Property, being the main parcel, is valued with the first-acre value, while the other two parcels are valued as excess land.

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).

19. The Taxpayer did not provide the Commission with any evidence quantifying a lower valuation due to the chunks of concrete present on the Subject Property. The Taxpayer did not provide any evidence of similar properties with different valuations than the Subject Property.
20. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and 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: **\$45,660**.
3. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo 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 July 8, 2021.

Signed and Sealed: July 8, 2021

James D. Kuhn, Commissioner