

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

MARK E. FRIEHE
APPELLANT,

V.

HITCHCOCK COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 21A 0210, 21A
0211, 21A 0212, 21A 0213, 21A
0214, 22A 0426, 22A 0427, 22A
0428, 22A 0429, 22A 0430

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE HITCHCOCK
COUNTY BOARD OF
EQUALIZATION

I. BACKGROUND

1. The Subject Properties are 5 agricultural parcels in Hitchcock County.

Parcel ID	Tax Year	Assessed Value	Requested Value	County Board Determination
440033519	2021	\$341,110	\$234,636	\$341,110
440033519	2022	\$343,155	\$257,366	\$343,155
440033500	2021	\$231,325	\$158,172	\$231,325
440033500	2022	\$231,325	\$173,494	\$231,325
440058988	2021	\$83,945	\$57,395	\$83,945
440058988	2022	\$83,945	\$62,959	\$83,945
440078082	2021	\$31,860	\$21,780	\$31,860
440078082	2022	\$31,860	\$23,895	\$31,860
440058961	2021	\$28,725	\$19,640	\$28,725
440058961	2022	\$28,725	\$21,544	\$28,725

2. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
3. A Single Commissioner hearing was held on September 28, 2023, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, NE, before Commissioner James D. Kuhn.
4. Mark Friehe, the Taxpayer, was present at the hearing.
5. Eugene Garner and Terra Riggs were present for the County Board.

II. APPLICABLE LAW

6. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
7. The Commission's review of a determination of the County Board of Equalization is de novo.²
8. 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. 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).

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

unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

9. 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
10. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
11. 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
12. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

13. The Taxpayer asserted the values of the Subject Properties were excessive compared to other properties.
14. The Taxpayer asserted the Subject Properties were 4 miles from Hayes County, there was an easement trail to the properties, there were three water sources on the property with only one good well, and there were no mineral rights to the property.
15. The Taxpayer asserted the Subject Properties sold for less than the assessed value because of lack of fencing, a steep slope, lack of mineral rights, and difficulties accessing the properties.

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

16. The Taxpayer presented no evidence to allow the Commission to assess what impact, if any, these conditions have on the value of the Subject Properties.
17. A single sale may provide evidence of market value if no other sales are present. In this case, both the Taxpayer and the Assessor provided sales that show the current assessment of grassland appears to be correct.
18. The County Board asserted accepted mass appraisal techniques were used in assessing the Subject Properties and that outliers can happen.
19. The County Board asserted the Subject Properties were included in the sales study even though they were sold at an absolute auction with no minimum bid price.
20. The County Board presented Property Record Files (PRFs) for comparable properties which supported the assessed values.
21. The County Board stated all agricultural land used as grassland in Hitchcock County is valued at \$585 per acre.
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 determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable values of the Subject Properties for tax years 2021 and 2022 are affirmed.
2. The taxable values of the Subject Properties for tax years 2021 and 2022 are:

Parcel ID	Tax Year	Total Value
440033519	2021	\$341,110
440033519	2022	\$343,155
440033500	2021	\$231,325
440033500	2022	\$231,325
440058988	2021	\$83,945
440058988	2022	\$83,945
440078082	2021	\$31,860
440078082	2022	\$31,860
440058961	2021	\$28,725
440058961	2022	\$28,725

3. This Decision and Order, if no further action is taken, shall be certified to the Hitchcock County Treasurer and the Hitchcock 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 years 2021 and 2022.
7. This Decision and Order is effective on December 1, 2023.

Signed and Sealed: December 1, 2023



James D. Kuhn, Commissioner