

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

MARY B. MOSER
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NO: 21A 0873, 21A 0875,
21A 0877, 21A 0878, 21A 0879,
21A 0880, 21A 0881 & 21A 0882

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

I. BACKGROUND

1. The Subject Properties are agricultural land in Lancaster County, parcel numbers 02-36-400-001-000, 08-18-200-001-000, 01-14-400-004-000, 01-14-400-001-000, 07-06-100-007-000, 01-24-300-002-000, 07-18-200-002-000 & 07-17-400-006-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Properties at:

21A 0873	02-36-400-001-000	\$551,300
21A 0875	08-18-200-001-000	\$507,400
21A 0877	01-14-400-004-000	\$259,900
21A 0878	01-14-400-001-000	\$262,500
21A 0879	07-06-100-007-000	\$310,800
21A 0880	01-24-300-002-000	\$372,500
21A 0881	07-18-200-002-000	\$247,200
21A 0882	07-17-400-006-000	\$559,600

for tax year 2021.

3. Mary B. Moser (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Properties was:

21A 0873	02-36-400-001-000	\$551,300
21A 0875	08-18-200-001-000	\$507,400
21A 0877	01-14-400-004-000	\$259,900
21A 0878	01-14-400-001-000	\$262,500
21A 0879	07-06-100-007-000	\$310,800
21A 0880	01-24-300-002-000	\$372,500
21A 0881	07-18-200-002-000	\$247,200
21A 0882	07-17-400-006-000	\$559,600

for tax year 2021.

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 January 4, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mary B. Moser was present at the hearing for the Taxpayer.
8. Tim Sealock (the Appraiser) was present for the County Board.

II. 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

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).

“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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer stated the Subject Properties are close to Saline County and share the same soil types and therefore should be valued using the Saline County values. The Taxpayer used Area 2 values from Saline County to arrive at the requested value for the Subject 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).

17. The Appraiser stated Lancaster County is a fully influenced county and borrows agricultural land sales from seven other counties to value agricultural land in Lancaster County. The Appraiser stated the sales used to determine agricultural land values are approved by the Property Assessment Division (PAD) and then applied to all agricultural land in Lancaster County. The Appraiser asserted no sales of agricultural land from Lancaster County are used to determine the assessed value for agricultural land in Lancaster County due to the fact that they consider all agricultural land sales to be influenced.
18. The Appraiser stated Lancaster County is one market area. The Appraiser stated no matter where a property is located in Lancaster County, the agricultural values are the same for all taxpayers, even if they reside near the border of another county.
19. Simply owning property near an adjoining county does not entitle one to applying that counties values to a property. No evidence was given to show the values applied to the Subject Property were incorrect or inequitable. The Subject Properties are in Lancaster County and should be valued using Lancaster County values unless shown those values are incorrect or inequitable with similar properties in Lancaster County.
20. 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.
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.

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 year 2021 is affirmed.
2. The taxable value of the Subject Properties for tax year 2021 is:

21A 0873	02-36-400-001-000	\$551,300
21A 0875	08-18-200-001-000	\$507,400
21A 0877	01-14-400-004-000	\$259,900
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21A 0881	07-18-200-002-000	\$247,200
21A 0882	07-17-400-006-000	\$559,600

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2021.
7. This Decision and Order is effective on March 15, 2024.

Signed and Sealed: March 15, 2024



James D. Kuhn, Commissioner