

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

WEST LIMITED LLC
APPELLANT,

CASE NOS: 22A 0176, 22A
0177

V.

CUSTER COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE CUSTER COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Properties are two agricultural parcels in Custer County, parcel numbers 001270255 (Case No. 22A 0176) and 001270250 (Case No 22A 0177).
2. The Custer County Assessor (the County Assessor) assessed the Subject Properties at \$441,385 for parcel 001270255, and \$525,962 for parcel 001270250, for tax year 2022.
3. West Limited LLC (the Taxpayer) protested these values to the Custer County Board of Equalization (the County Board) and requested assessed values of \$321,997 for parcel 001270255, and \$321,697 for parcel 001270250.
4. The County Board determined that the taxable values of the Subject Properties were \$441,385 for parcel 001270255, and \$525,962 for parcel 001270250.
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 October 6, 2023, at Cobblestone Hotel, 2750 S. 27th Avenue, Broken Bow, NE, before Commissioner James D. Kuhn.
7. Roger Harders was present at the hearing for the Taxpayer.

8. Steven Bowers and Elise Taylor were 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 "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

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).

⁴ *Id.* at 283-84.

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

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 asserted the value of the Subject Properties are excessive compared to comparable properties.
17. The Taxpayer presented multiple Property Record Files (PRFs) of other properties to support their claim the Subject Properties were overvalued.
18. The Taxpayer purchased the Subject Properties in a single sale in November 2021 and presented a copy of the purchase agreement.
19. The Taxpayer stated the irrigation system cannot pump enough water to properly irrigate the Subject Property. The Taxpayer asserted the comparable property south of the Subject Property has better soils than the Subject Property. The Taxpayer stated the Subject Property has sandy soil.
20. The County Board presented the PRFs of comparable properties with the same soil types and uses as the Subject Properties being valued equally per acre as the Subject Properties.
21. The County Board presented sales of comparable properties supporting the assessed value of the Subject Properties.

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).

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 year 2022 are affirmed.
2. The taxable value of the Subject Property for parcel number parcel numbers 001270255 is:

Total	\$441,385
--------------	------------------

3. The taxable value of the Subject Property for parcel number parcel numbers 001270250 is:

Total	\$525,962
--------------	------------------

4. This Decision and Order, if no further action is taken, shall be certified to the Custer County Treasurer and the Custer County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2022.
8. This Decision and Order is effective on December 1, 2023.

Signed and Sealed: December 1, 2023



James D. Kuhn, Commissioner