

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

DENNIS E. HOOVER
APPELLANT,

CASE NO: 23A 0171

V.

NEMAHA COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an unimproved, Wetlands Reserve Program parcel in Nemaha County, parcel number 640071716.
2. The Nemaha County Assessor (the County Assessor) assessed the Subject Property at \$324,000 for tax year 2023.
3. Dennis E. Hoover (the Taxpayer) protested this value to the Nemaha County Board of Equalization (the County Board) and requested an assessed value of \$162,000 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$324,000 for tax year 2023.
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 8, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Dennis Hoover was present at the hearing for the Taxpayer.
8. Mallory Lempka (Assessor) and Morgan Ritchie (Deputy Attorney) 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 Subject Property is an unimproved parcel containing 218.8 acres of Wetland Reserve Program (WRP) land used for waterfowl hunting by the owner and as contracted land to qualifying individuals at approximately \$800-900 per person per year as specified by the Taxpayer. The number of contracts varies per year.
17. The Taxpayer opined that WRP land is not as valuable as other types of land, and the current assessment is unreasonable.
18. The Taxpayer stated the Subject Property was originally purchased from the previous owner in 1999 after its entrance into the WRP program, for a duck hunting club. The program offered a lump sum payment to the previous owner and no additional income stream to subsequent owners for the initial contract.
19. The Taxpayer was able to enter a program offered through the WRP as another means of income which allowed 50% of the land to be seeded and hayed for payment of \$10-\$15 per bale. The amount of successful hay per year varies.

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).

20. The Taxpayer opined that because the parcel has a permanent easement in the WRP program, the property should be granted 20% deduction for the inability to be built upon, 10% deduction for an access easement, 10% deduction for lack of potable water/sewer, and a 10% deduction for lack of ability to gain buyer financing.
21. The Taxpayer attested that the percentage deductions were derived from conversations with local realtors and financial institutions.
22. The Taxpayer did not provide additional evidence to quantify the adjustment percentages for analysis.
23. The Assessor attested that using professionally accepted mass appraisal practices, the WRP price per acre was derived from market analysis. There were three sales within the sales study period but due to lack of representation, three older sales were also considered in the analysis to determine current value.
24. 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.
25. 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 decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$324,000
<u>Improvements</u>	<u>\$ 0</u>
Total	\$324,000

3. This Decision and Order, if no further action is taken, shall be certified to the Nemaha County Treasurer and the Nemaha 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 2023.
7. This Decision and Order is effective on July 22, 2024.

Signed and Sealed: July 22, 2024



Jackie S. Russell, Commissioner