

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lowell M. Thrasher,
Appellant,

v.

Jefferson County Board of Equalization,
Appellee.

Case No: 13A 035

Decision and Order Affirming Jefferson
County Board of Equalization

1. A Single Commissioner hearing was held on February 27, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Lowell M. Thrasher was present at the hearing (Taxpayer).
3. Vicki Haskell, Jefferson County Assessor, was present for the Jefferson County Board of Equalization (the County).
4. The Subject Property (Subject Property) is an unimproved agricultural parcel, with a legal description of: SW ¼ 32-3-2, Jefferson County, Nebraska.

Background

5. The Jefferson County Assessor assessed the Subject Property at \$552,887 for tax year 2013.
6. The Taxpayer protested this value to the Jefferson County Board of Equalization and requested an assessed value of \$350,000 for tax year 2013.
7. The Jefferson County Board of Equalization determined that the assessed value of the Subject Property was \$552,887 for tax year 2013.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Taxpayer alleged that the Subject Property was not being equalized with other agricultural parcels in Jefferson County. He provided the Commission with property record cards for five alleged comparable properties and stated that two had identical locations and three had superior locations.
15. The three alleged comparable properties with superior locations were located along a black top road and it was the Taxpayer’s opinion that they would have a higher market valuation.
16. It was The Taxpayer’s opinion that the five alleged comparable properties had higher quality more productive soils.
17. The Taxpayer also noted that the Subject Property had terraces that, in his opinion, would reduce the market valuation of the parcel.
18. It was also the Taxpayer’s opinion that soil type 3824 and soil type 3825, both dryland classifications, should not have the same assessed valuation per acre. He asserted that the County Assessor was arbitrary in the methodology used to establish the assessed valuations of these soil types.
19. The Taxpayer’s opinion of value was \$3,040 per acre which he determined using the five alleged comparable properties and averaging their valuations per acre.
20. The County Assessor stated that she uses three years of sales to establish the assessed valuation of agricultural land. She provided the Commission with the Sales Roster and appraisal cards for the sales.

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

21. The County Assessor stated that she was unable to quantify from the market if there would be a difference in sales price for agricultural land located along a paved road.
22. The County Assessor also stated that, to her knowledge, her current sales only included one parcel with terraces. The Commission notes that the sale was not adjusted for the differences in the land use and soil types.
23. The Commission notes that both the Taxpayer and County Assessor presented the same two sales as comparables that were located along a highway. One had a sales assessment ratio of 40.53% and the other had a sales assessment ratio of 84.67%. There were several sales of parcels that were not along a highway that had similar sales ratios and the Commission was unable to determine what effect, if any, proximity to the highway had on the actual value of a parcel.
24. The Taxpayer stated that he watches agricultural sales and would consider himself an expert in the valuation of land. He provided articles stating that location and topography and obstacles would affect the land valuations. It was his opinion that the Subject Property had negatives for all three and that would decrease the assessed value of the Subject Property by \$500 per acre.
25. The Taxpayer did not provide the Commission with any sales or other data to support his opinion of value. An owner may testify concerning the value of his property, but that opinion of value is only competent evidence.⁸ The Nebraska Supreme Court has held the value of an opinion of an expert witness, or any witness, must be dependent upon and is no stronger than the facts upon which it is predicated, and it has no probative force unless the assumptions upon which it was based are shown to be true.⁹
26. The Commission finds that the Taxpayer's unsupported opinion of value is not clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
27. 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.
28. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Jefferson County Board of Equalization determining the value of the Subject Property for tax year 2013, is Affirmed.

⁸ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999)..

⁹ See, *McArthur v. Papio-Missouri River Natural Resources District*, 250 Neb. 96, 547 N.W.2d 716 (1996).

2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$552,887
Total	\$552,887

3. This Decision and Order, if no further action is taken, shall be certified to the Jefferson County Treasurer and the Jefferson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
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 2013.
7. This Decision and Order is effective on March 6, 2014.

Signed and Sealed: March 6, 2014

Nancy J. Salmon, Commissioner