

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Six Diamonds, LLC,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 15A 0039

Decision and Order Reversing Keith
County Board of Equalization

Background

1. The Subject Property is an improved agricultural parcel, with a legal description of: NW ¼ 1-12-41 cont. 163.90 acres, Keith County, Nebraska.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property at \$734,365 for tax year 2015.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$527,366 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$734,365 for tax year 2015.
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 19, 2016, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J. Salmon.
7. Phillip D. Bartle and Daniel Archer were present at the hearing for the Taxpayer.
8. Randy Fair, Keith County Attorney was present for the County Board.

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 the 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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *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 (2009).

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

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

Findings of Fact & Conclusions of Law

16. The Taxpayer asserts that the valuation of the improvements on the Subject Property was not equalized with comparable property in the county.
17. The Subject Property is an agricultural parcel with improvements. The improvements include a hay shed and two steel grain bins. The bins are identical and were erected in 2009. The dimensions of each are 36’x29’x8’. The bins have aeration floors but no drying fans. The Taxpayer did not contest the valuation of the hay shed.
18. The Assessor valued the bins at \$53,220 each. The bins were valued as if they had drying fans, which they did not. At the hearing, the Assessor agreed that this was in error and stipulated that the bins did not have drying fans.
19. The Taxpayer brought information to the hearing indicating that a nearby property in the county, owned by Steve Jehorek (the Jehorek Property), had a similar bin that was valued for less than the bins on the Subject Property. At the hearing, the Assessor agreed that the bin on the Jehorek Property was identical to the bins on the Subject Property. The bins were the same age and dimensions.
20. The bin on the Jehorek Property was valued at \$25,970 for the 2015 tax year. The Assessor explained that the difference in value compared to the Subject Property was because the bin on the Jehorek Property had been valued using an old costing table. She

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2014 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

stated that the bins on the Subject Property were valued using an updated costing table. She stated that her office was in the process of re-appraising all rural buildings for 2018.

21. The Nebraska Constitution requires that taxes on real property shall be levied by valuation uniformly and proportionately.⁹
22. A taxpayer has a right to relief when a taxpayer's property is assessed in excess of the value at which others are taxed.¹⁰
23. The County Board has a plain duty to value comparable properties similarly.¹¹
24. A property owner rebuts the presumption that the county board of equalization was correct when all parties agree that the subject property was comparable to a property with a much lower valuation.¹²
25. Because the bins on the Subject Property were comparable and similar to the bin on the Jehorek Property, they should have been valued the same. Each bin should be valued at \$25,970.
26. As a result, the value of the improvements on the Subject Property should be \$68,255.
27. The Taxpayer has 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 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 vacated.

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 2015, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$611,610
<u>Improvements</u>	<u>\$ 68,255</u>
Total	\$679,865

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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.

⁹ *Neb. Const.*, Art. VIII, §1

¹⁰ *Cabela's, Inc. v. Cheyenne Cty. Bd. Of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹¹ *Zabawa v. Douglas Cty. Bd. Of Equal.*, 17 Neb.App. 221, 757 N.W.2d 522 (2008).

¹² *Ibid.*

6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on July 26, 2016.

Signed and Sealed: July 26, 2016

Nancy J. Salmon, Commissioner