

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rudolph C. Svoboda,
Appellant,

v.

Colfax County Board of Equalization,
Appellee.

Case No: 15A 0016

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is an unimproved agricultural parcel with a legal description of: N ½ SW ¼ NW ¼, 20 Acres, Colfax County, Nebraska.
2. The Colfax County Assessor (the County Assessor) assessed the Subject Property at \$107,905 for tax year 2015.
3. The Taxpayer protested this value to the Colfax County Board of Equalization (the County Board) and requested an assessed value of around \$85,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$107,905 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 June 17, 2016 at the River’s Edge Convention Center, 265 33rd Ave., Columbus, Nebraska, before Commissioner Nancy J. Salmon.
7. Rudolph C. Svoboda was present at the hearing on behalf of himself (Taxpayer).
8. Edmond E. Talbot III., 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

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).

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
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 expressed concerns that the County Assessor does not use all sales to set the valuation of property. He stated if a property changes hands, that it is a good sale and should be used. The Taxpayer provided the Commission with a list of sales of agricultural land in Colfax County for the three year study period the County Assessor used for the January 1, 2015 assessed values of agricultural land. The Assessor explained that they only use arm’s-length transactions.
17. An arm’s length transaction is “a transaction between unrelated parties under no duress.”⁹ Non-arm’s length sales should be identified and rarely if ever used¹⁰ and should not be used in ratio studies.¹¹
18. The taxpayer asserted that land valuations were down according to the reports he has read. He stated that he also receives less cash rent for the current market because of the prices. The Assessor stated that land valuations may be leveling off in Colfax County, but that there was still a need for an increase on January 1, 2015.

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) (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.).

⁹ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

¹⁰ Appraisal Institute, *The Appraisal of Real Estate*, at 304 (13th ed. 2008). Appraisal Institute, *The Appraisal of Real Estate*, at 385 (14th ed. 2013).

¹¹ International Associations of Assessing Officers, *Fundamentals of Mass Appraisal*, at 73-74 (2011).

19. The Taxpayer provided the Commission with several tax statements and property record cards of parcels 20 acres or under. He asserted that a parcel of 20 acres should have the same taxes per acre no matter the land use or location. The Taxpayer provided his property record card that shows the Subject Property as having 13.42 acres of irrigation and 6.08 acres of dryland with a valuation of \$107,905. The taxes on the Subject Property are \$85.81 per acre. An alleged comparable property had all irrigation with an assessed valuation of \$110,945, but the taxes are \$66.99 per acre. The Assessor explained that the two parcels are in different taxing districts. The tax rate for the Subject Property is 1.590509 and the rate for the alleged comparable property is 1.207619. This would explain the higher valuation, but lower tax dollars per acre.
20. The Commission reviewed the property record cards and tax statements supplied by the taxpayer. It is noted that all the land classes were equalized and the only difference was the tax rates. Equalization is “the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax.”¹²
21. 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.
22. 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.

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 Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

<u>Land</u>	<u>\$ 107, 905</u>
Total	\$ 107,905

3. This Decision and Order, if no further action is taken, shall be certified to the Colfax County Treasurer and the Colfax 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.

¹² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on June 24, 2016.

Signed and Sealed: June 24, 2016

Nancy J. Salmon, Commissioner