

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald E. Kubicek,
Appellant,

v.

Saline County Board of Equalization,
Appellee.

Case No: 14A 030

Decision and Order Affirming Saline
County Board of Equalization

BACKGROUND

1. The Subject Property is an agricultural parcel improved with vacant dwelling and several outbuildings, with a legal description of: NE ¼ & N ½ SE ¼ 4-6-4, 239.95 Ac, Saline County, Nebraska.
2. The Saline County Assessor (the County Assessor) assessed the Subject Property at \$631,710 for tax year 2014.
3. The Taxpayer protested this value to the Saline County Board of Equalization (the County Board) and requested an assessed value of \$459,625 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$597,250 for tax year 2014.
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 March 1, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
7. Donald E. Kubicek was present at the hearing on behalf of himself (Taxpayer).
8. Brandi Kelly, Saline County Assessor, 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 asserted that the Subject Property was overvalued. He asserted that the Subject Property has several sandy places, is erodible, and has a creek running through the property. He asserted that the crop production is down because of the sandy soil. He provided the Commission with several photos of the Subject Property and aerial maps pointing out the areas.
17. Mr. Dean Gorgen, Appraiser for Saline County Assessor’s Office (the County Appraiser), explained that the Subject Property was valued using the Sales Comparison Approach. The County Appraiser provided the Commission with property record cards for five comparable sales and explained that 23 sales were used to set the 2014 valuations for Market Area 3. He noted that he sets the value using the soil types set by the Soil Conservation Service and the LCG’s assigned to those soil types by the Property Tax Administrator. He advised the Taxpayer to contact the Soil Conservation Service if he believed the soils on his farm were incorrect.
18. The Commission is authorized by statute to consider and utilize publications included in the Commission’s rules and regulations without taking notice on the record.⁹ The Commission has taken notice of the “Soil Survey for each of the 93 counties of the State

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 See, Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.).

of Nebraska as published by the United States Department of Agricultural or its subdivisions[.]”¹⁰

19. The Commission compared the Subject Property’s soil types, soil textures, composition, and cation exchange capacities as contained in the Kubicek analysis with those found in the Soil Survey.¹¹
20. The Commission notes that the soil types assigned by the County Assessor to the Subject Property as contained in the Subject Property’s property record file are identical to the soil types assigned in the Soil Survey.
21. The Commission notes that soil types assigned by the soil survey contain significantly similar characteristics as the Kubicek analysis; including but not limited to similar soil textures, saturations, and cation exchange capacities.
22. Further, the County Assessor provided the Commission with the Property Tax Administrator’s soil conversion chart which translates the soil types into LCGs. The Commission has reviewed the soil conversion chart and the LCGs and determines that the County Assessor assigned the soil types on the Subject Property the LCGs as directed by the Property Tax Administrator’s soil conversion chart.
23. Other than the Taxpayer’s general assertions, there is no direct evidence that the Property Tax Administrator’s soil conversion chart assigned inappropriate LCGs to the soil types. The Commission also notes that none of the Subject Property’s soil types are assigned high capability LCGs and that most of the soil found on the Subject Property is assigned an LCG in the lower half of the capability classifications.
24. The Taxpayer did not quantify a convincing opinion of the actual value of the Subject Property, and an examination of the rest of the evidence in the case indicates that there is not clear and convincing evidence that the County Board’s determination was arbitrary or unreasonable.
25. 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.
26. 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 2014, is Affirmed.

¹⁰ See, 442 Neb. Admin. Code, ch. 5 §031.02 (06/06/11).

¹¹ The current Soil Survey is produced by the Natural Resources Conservation Service which is a subdivision of the United States Department of Agriculture and can be accessed online at <http://websoilsurvey.sc.egov.usda.gov>.

2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$592,540
<u>Improvements</u>	<u>\$ 4,710</u>
Total	\$597,250

3. This Decision and Order, if no further action is taken, shall be certified to the Saline County Treasurer and the Saline 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.
6. This Decision and Order shall only be applicable to tax year 2014.
7. This Decision and Order is effective on March 3, 2016.

Signed and Sealed: March 3, 2016

Nancy J. Salmon, Commissioner