

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ron & Melissa Evans Trust,
Melissa Evans, Co-Trustee,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case Nos: 17A 0124, 17A 0125, 17A 0126,
17A 0127, 17A 0128, 17A 0129
& 17A 0130

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Properties are seven agricultural parcels consisting of approximately 3,616.43 acres of grassland with a single family home and outbuildings, with a legal description of: All 6-15-39 623.86 A, All N of State Hwy 92 7-15-39 391.09 A, TR in W1/2 8-15-39 74.12 A, All 19-16-39 622.25 A, All 31-16-39 623.97 A, All 24-16-40 637.37 A, All 25-16-40 643.77 A.
2. The Keith County Assessor (the County Assessor) assessed the Subject Properties as follows for tax year 2017:

17A 0124:	\$413,140
17A 0125:	\$175,995
17A 0126:	\$33,355
17A 0127:	\$275,965
17A 0128:	\$289,955
17A 0129:	\$286,820
17A 0130:	\$289,695
3. The Taxpayer protested these values to the Keith County Board of Equalization (the County Board) and requested a total assessed value of \$1,432,185 for tax year 2017.
4. The County Board determined that the taxable values of the Subject Properties were as listed at paragraph 2 above. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
5. A Single Commissioner hearing was held on June 5, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
6. Melissa M. Evans was present at the hearing for the Ron & Melissa Evans Trust (the Taxpayer).
7. Randy Fair, Keith County Attorney, and Renae Zink, the County Assessor, were present for the County Board.

Applicable Law

8. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
9. The Commission's review of the determination of the County Board of Equalization is de novo.²
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 Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

15. The Taxpayer takes issue with some of the borrowed sales being used by the county to set values for 4G Grassland in Keith County. It feels that these borrowed sales do not accurately reflect 4G Grassland values in Keith County. Specifically, the Taxpayer asserted that the county should not use any irrigated or dryland sales that were borrowed from other counties.

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

² See, Neb. Rev. Stat. §77-5016(8) (2016 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).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 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) (2016 Cum. Supp.).

16. The sales used by the County Assessor also included a smaller parcel of 33.29 acres that the Taxpayer believes is more of a recreational home site and therefore should not be used in the sales study.
17. The County Board stated that although the sales to which the Taxpayer objected showed up on the preliminary reports, they were not used in the final statistics for setting values for Grassland in Keith County.
18. The Taxpayer also thinks that the two sales of the Arreguy to McCracken should only be counted as one sale. The County Board argued that two separate deeds were filed and it was a sale of two separate parcels with different ownership; it therefore counted both sales.
19. The Taxpayer's representative asserted that she was intentionally given incorrect sales data spreadsheets by the county assessor. The first spreadsheet she was given consisted of 7 sales. When the Taxpayer reviewed the spreadsheet later, she noticed it said "# of sales= 22." When she returned to the assessor's office she was given a new spreadsheet with all 22 sales which included 15 borrowed sales from adjoining counties. The County Board's representatives asserted that the initial spreadsheets given to the Taxpayer were preliminary statistics and that the State Property Assessment Division had recommended using borrowed sales from other counties since Keith County did not have enough Grassland sales. The County Assessor stated that she did not know what sales were going to be used in the County's Reports and Opinions until they were finalized.
20. The Taxpayer took issue with the County Assessor providing the County Board with a different spreadsheet the day after the Taxpayer had her protest hearing. At that time, the protests were not finalized and the County Board was still looking for more information as to the Grassland values.
21. The Taxpayer provided no supporting documentation to show how she arrived at her requested values. It appears as though the Taxpayer is requesting the 2016 assessed values to be used as the 2017 valuation.
22. The Taxpayer did not present persuasive evidence that the use of borrowed sales resulted in inaccurate assessment of the Subject Properties.
23. Ideally, the Taxpayer would have been given the correct and complete sales information prior to the protest hearing. However, the Taxpayer did not present evidence that the irregularities related to the sales spreadsheets actually affected the County Board's valuation of the Subject Properties. Moreover, the Taxpayer was provided with an opportunity for de novo review of the actual value of the Subject Properties at the hearing before the Commission.
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.

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 2017, is Affirmed.
2. The taxable value of the Subject Properties for tax year 2017 is:

17A 0124	Land	\$305,335
	<u>Improvements</u>	<u>\$107,805</u>
	Total	\$413,140

17A 0125	Land	\$175,995
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$175,995

17A 0126	Land	\$33,355
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$33,355

17A 0127	Land	\$275,965
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$275,965

17A 0128	Land	\$280,390
	<u>Improvements</u>	<u>\$ 18,565</u>
	Total	\$298,955

17A 0129	Land	\$286,820
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$286,820

17A 0130	Land	\$289,695
	<u>Improvements</u>	<u>\$ 0</u>
	Total	\$289,695

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 (2016 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 2017.
7. This Decision and Order is effective on June 8, 2018.

Signed and Sealed: June 8, 2018.

James D. Kuhn, Commissioner