

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ronald J. Fisher,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case No: 13A 055

Decision and Order Affirming Sheridan
County Board of Equalization

1. A Single Commissioner hearing was held on June 23, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. Ronald J. Fisher (the Taxpayer) was present at the hearing.
3. Dennis D. King was present for the Sheridan County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an agricultural parcel improved with a 1,676 square foot dwelling and 40' x 80' utility building with a legal description of: NW ¼, N ½ N ½ SW ¼, 2-31-44, Sheridan County, Nebraska.

Background

5. The Sheridan County Assessor (the Assessor) assessed the Subject Property at \$153,592 for tax year 2013.
6. The Taxpayer protested this value to the Sheridan County Board and requested an assessed value of \$146,951 for tax year 2013.
7. The Sheridan County Board determined that the taxable value of the Subject Property was \$150,525 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board 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 asserted that the dwelling on the Subject Property was overvalued for 2013. He did not question the valuation of the agricultural land or utility building associated with the parcel.
15. The Taxpayer asserted that the assessor’s office had classified the parcel as an agricultural parcel. He asserted that since the parcel was classified as an agricultural parcel, the improvements on the Subject Property could not be valued using sales classified as rural residential properties. He asserted that the statutes were not the same for agricultural parcels as residential parcels.
16. Nebraska Statutes define agricultural land as:

Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.⁸

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).

⁸ Neb. Rev. Stat. §77-1359(1) (2012 Cum. Supp.).

17. The land associated with a residence on a parcel containing agricultural land is statutorily defined as farm home site.⁹ Agricultural land is a separate and distinct class of property from farm home site, and other than exempt properties, is the only class of real property statutorily permitted to be valued less than 100% of actual value.¹⁰
18. The County Assessor stated that she values improvements on agricultural parcels as residential at 100% of market value using the cost approach with market depreciation. She stated that for tax year 2013, there were 10 rural residential parcels and after review of her sales, her improvement values on rural properties were approximately 8% below the statutory range of 92 – 100%. She increased all rural improvements by 8% both those associated with agricultural parcels and those associated with rural residential parcels.
19. The Taxpayer asserted that the dwelling improvement should be assessed at the 2012 valuation because of the assessor’s arbitrary use of rural residential parcels to increase by 8%. He once again stated that rural residential parcels could not be used to make any adjustments on improvements on agricultural parcels.
20. The Commission finds that both farm home site, and rural residential parcels contain residences with similar characteristics and desirability. The Commission finds that it is not unreasonable to compare residences located on farm home sites and residences located on rural residential parcels for purposes of determining the actual value of real property for ad valorem purposes.
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 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 Sheridan County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 63,935
Improvements	\$ 86,590
Total	\$150,525

⁹ Neb. Rev. Stat. §77-1359(3) (2012 Cum. Supp.).

¹⁰ See, Neb. Rev. Stat. §77-1359 (2012 Cum. Supp.).

3. This Decision and Order, if no further action is taken, shall be certified to the Sheridan County Treasurer and the Sheridan 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 July 1, 2014.

Signed and Sealed: July 1, 2014.

Nancy J. Salmon, Commissioner