

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Vincent L. Dowding and  
Nancy G. Dowding,  
Appellants,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 15A 0076

Decision and Order Affirming the  
Determination of the Otoe  
County Board of Equalization

Background

1. The Subject Property is a 160 acre agricultural and horticultural parcel, with a legal description of: NE ¼ of 13-8-9 160AC, Otoe County, Nebraska.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$604,530 for tax year 2015.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$454,400 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$604,530 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 August 21, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven A. Keetle.
7. Jarrod P. Crouse, Attorney was present at the hearing for Vincent L. and Nancy G. Dowding (Taxpayer).
8. John R. Palmtag 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property exceeds the market value of the property and is not equalized with other properties in the county.
17. There were two appraisals presented to the Commission that were preformed to determine the value of the Subject Property, or a portion of the Subject Property, in late 2014. These appraisals arrived at different values for the Subject Property, however both appraisals indicate that they conform with the *Uniform Standards of Professional Appraisal Practice* (USPAP).
18. The Nebraska Supreme Court has held that when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to overcome the presumption that the County Board faithfully performed its duties and acted on sufficient competent evidence under Nebraska law.<sup>9</sup>
19. One appraisal determined that the market value of the Subject Property on September 12, 2014, would be \$762,000.

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>9</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty Bd of Equal*, 285 Neb. 120, 825 N.W.2d 447 (2013) citing *US Ecology v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999) and *Schmidt v. Thayer Cty. Bd. of Equal.*, 10 Neb.App. 10, 624 N.W.2d 63 (2001).

20. The other appraisal determined that the market value of just a 2/3 interest in the Subject Property would be \$640,000, on November 1, 2014. This would indicate a full market value for the Subject Property of \$853,334.
21. The Assessor determined that the Subject Property has an assessed value of \$604,530 as of January 1, 2015. This would indicate a full market value for the Subject Property of \$851,450.<sup>10</sup>
22. The assessed value as determined by the County Assessor, and approved by the County Board is within the range of values suggested by two USPAP compliant appraisals.
23. The County Board presented Property Record Files of properties located in Otoe County that are similar to the Subject Property which demonstrated that the assessed values of agricultural and horticultural properties in the county were assessed using the same assessment model as the Subject Property.
24. 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.
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 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$604,530.
3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe 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 2015.
7. This Decision and Order is effective on November 22, 2017.

Signed and Sealed: November 22, 2017

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Steven A. Keetle, Commissioner

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<sup>10</sup> For tax year 2015 the level of assessment for agricultural and horticultural land in Otoe County was 71% of actual or fair market value, therefore the market value of the subject property would be  $\$604,530 \div .71 = \$851,450$ .

