

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

Loren W. Koch,  
Appellant,

v.

Cass County Board of Equalization,  
Appellee.

Case Nos: 16A 0058, 16A 0059 &  
16A 0060

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Properties are mixed use agricultural land, with legal descriptions of: (16A-0058) E1/2 NE1/4 & NW1/4 NE1/4 (120 acres), (16A-0059) SW1/4 NE1/4 (40 acres) and (16A-0060) NE1/4 NW1/4 (40 acres)
2. The Cass County Assessor (the County Assessor) assessed the Subject Properties at \$753,643 (16A-0058), \$174,338 (16A-0059), \$76,284 (16A-0060) for tax year 2016.
3. Loren Koch (the Taxpayer) protested this value to the Cass County Board of Equalization (the County Board) and requested an assessed value of \$316,258 (16A-0058), \$121,688 (16A-0059), \$57,002 (16A-0060) for tax year 2016.
4. The County Board determined that the taxable value of the Subject Properties was \$753,643 (16A-0058), \$174,338 (16A-0059) and \$76,284 (16A-0060) for tax year 2016.
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 October 17, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Loren Koch was present at the hearing.
8. Lori Huebner (the 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.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</sup> 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).

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 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 feels the Subject Property is not worth the current assessment due to poor soils, slope of land, need for terracing, rocky terrain and constant erosion. The Taxpayer also stated there is no potential for irrigation on these parcels and the amount of rock in the ground make it less desirable for potential buyers.
17. The Taxpayer quoted from various articles as to the decline in agricultural land values in Nebraska, particularly in the eastern portion of the state. The Assessor is required to use a three year study of sales in the county which may be realized in higher assessed values due to the historical data being used.
18. The Taxpayer provided aerial photographs of comparable properties to highlight the inequities in the price per acre compared to the Subject Property. The aerial photos and other photographs provided by the Taxpayer showed the comparable properties to have less slope and appeared to be more flat than the Subject Property. However, no property record cards were provided for these comparable properties; therefore, the Commission

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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.).

cannot compare soil types with the Subject Property to see if they are being valued differently or if they are truly comparable to the Subject Property.<sup>9</sup>

19. The Taxpayer was not protesting the valuation of any of the improvements on the Subject Properties.
20. The Assessor stated she uses three years of qualified agricultural land sales as required by statute to determine the assessed values. The Assessor also stated the soil types provided by the Soil Conservation Service take into account for the poor soils and erosion. The Assessor was unsure if the soil types took into account the amount of slope of the land.
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 2016, is Affirmed.
2. The taxable value of the Subject Properties for tax year 2016 is:

Total \$753,643 (16A-0058)  
Total \$174,338 (16A-0059)  
Total \$76,284 (16A-0060)

3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 2016.
7. This Decision and Order is effective on October 24, 2018.

Signed and Sealed: October 24, 2018

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James D. Kuhn, Commissioner

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<sup>9</sup> The Order for Single Commissioner Hearing and Notice issued to the parties in this matter includes this instruction: "Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed." See Case File.

