

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nicholas L. Glause,
Appellant,

v.

Merrick County Board of Equalization,
Appellee.

Case No: 16A 0127

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is agricultural, (or, “Ag”) with a legal description of: E1/2 of Sec 1/4 of Sec 18T 13R 8 W consisting of 72 acres.
2. The Merrick County Assessor (the County Assessor) assessed the Subject Property at \$356,055 for tax year 2016.
3. Nicholas L. Glause (the Taxpayer) protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$261,288 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$356,055 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 July 2, 2018, at the Law Enforcement Center, 111 Public Safety Drive, Community Meeting Room, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Nicholas and Ashley Glause were present at the hearing.
8. Jan Placke, the County Assessor, and Lynelle Homolka, Merrick County Attorney, were 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

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).

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.”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. An appraisal was performed on the Subject Property in December 2015 by Bob Lammers. The appraisal reflected a market value of \$317,400.
17. The property was originally purchased by the Taxpayers parents at auction for \$261,288 in November of 2015 with the intent to sell the Subject Property to the Taxpayer. In January 2016, the Taxpayer purchased the Subject Property from the parents for the same amount. The Taxpayer feels that the January 2016 purchase price and December 2015 appraisal are a better reflection of market value of the property.
18. The County Assessor stated that her Ag land values are set using a three year sales study period which is set by state statute for assessing Ag land. This is the generally accepted method for mass appraisal of Ag land.
19. The County Assessor stated that the appraisal offered as evidence by the Taxpayer only used sales within one month and does not reflect the historical trend of Ag land values over the three year period she uses to value Ag land.

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.).

20. The County Assessor used the information from the Natural Resources District (NRD) to determine the amount of Irrigated acres on this parcel.
21. The Taxpayer stated that the south end of the property has poor soils with high pH levels and requires more expensive fertilizer. The county records indicate that the south portion of the property is already being valued as a poor soil type.
22. Under Nebraska law, the statutory measure of actual value is not what an individual buyer may be willing to pay for the property, but, rather, its market value in the ordinary course of trade.⁹ The value reflected by the generally accepted methodology for valuing Agricultural Land is the best measure of the Subject Property's market value in the ordinary course of trade.
23. 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.
24. 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 Property for tax year 2016 is:

Land	\$356,055
<u>Improvements</u>	<u>\$ 0</u>
Total	\$356,055

3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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 July 9, 2018.

⁹ *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.* 8 Neb. App. 582, 597 N.W.2d 623 (1999).

Signed and Sealed: July 9, 2018

James D. Kuhn, Commissioner