

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

Ruth H. Neeman,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 16A 0154

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

**Background**

1. The Subject Property is 209.28 acre agricultural parcel located in Otoe County, Nebraska. The legal description of the parcel is 22-8-11 E1/2 EXC S 100 AC LESS TRACT 209.28 AC SYRACUSE.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$792,600 for tax year 2016.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$779,110 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$831,170 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 August 24, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Ruth H. Neeman was present at the hearing.
8. John R. Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christina Smallfoot, Deputy Otoe County Assessor 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.<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> 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).

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

16. The initial assessment of the Subject Property per the notice sent to the Taxpayer by June 1, 2016 was \$792,600. The Taxpayer filed a protest of that assessment.
17. After the assessment, and prior to the County Board making its determination, the County Assessor provided the County Board with new information taken from aerial photography, indicating that an additional 18.73 acres had been added to the total tillable acres of the parcel. This increased the number of tillable acres from 171.93 acres to 190.66 acres. As a result, the County Assessor reassigned some of the acres that were previously assessed as grassland to dryland. This resulted in an increase in the actual value of the agricultural land from \$788,490 to \$827,060.<sup>9</sup> Based upon this information, the County Assessor recommended a taxable value of \$831,170 to the County Board at the protest proceeding.
18. The Commission notes that the property record cards for the Subject Property and other agricultural properties in Otoe County for tax year 2016 show that the acres in each Land

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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, Property Record Card in the Case File. The parcel also included improvements valued at \$4,110. The value of the improvements were undisputed.

Capability Group (LCG)<sup>10</sup> of the Subject Property and the other properties was assessed at the same value per acre.

19. The Taxpayer argued that the assessment increase from tax year 2015 to tax year 2016 was too large.
20. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>11</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>12</sup>
21. The Taxpayer also argued that it was unfair that she did not have the opportunity to protest the increased assessment that the County Assessor recommended to the County Board at the protest proceeding. The Commission finds that while the process followed by the County Assessor and County Board resulted in the County Board increasing the taxable value of the Subject Property, that process did not deprive the Taxpayer of any due process: The Taxpayer exercised the right to appeal the County Board determination to this Commission in the instant case.
22. The Taxpayer provided no other information regarding the actual value of the Subject Property for tax year 2016.

#### Conclusions of Law

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 \$831,170.

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<sup>10</sup> "All soil types in a county are assigned to a Land Capability Group. As soil mapping is completed, conversion legends are prepared by the Department of Revenue, Property Assessment Division according to the dryland capability classification of each soil that shows, in a general way, the suitability of each soil for most kinds of field crops. Grouping and inventorying soils in this way creates a uniform classification system and is the next step in the assessment of agricultural land. The conversion legend shows the LCG for each soil in the county whether in grassland, dryland or irrigated cropland. The conversion legend groups similar soils throughout their area of occurrence into the same LCG. A conversion legend of the soils of Nebraska is made available to the assessors." NAC Title 350, Chapter 14, §004.08B (Rev. 3/15/09).

<sup>11</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>12</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

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 2016.
7. This Decision and Order is effective on August 29, 2017.

Signed and Sealed: August 29, 2017

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Robert W. Hotz, Commissioner