

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bernard J. Morello,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 16A 0209, 16A 0210, 16C 0211,
16A 0212, 16C 0213, 17A 0193, 17A 0194,
17A 0195, 17A 0196, 17A 0197, 18A 0225,
18A 0226, 18A 0227, 18A 0228, 18A 0229

Decision and Order Affirming the Decisions
of the Douglas County Board of
Equalization

For the Appellant:
Bernard J. Morello,
Pro se

For the Appellee:
Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property in these appeals comprises five distinct agricultural parcels located in Douglas County, Nebraska. The taxable value of the parcels is at issue for tax years 2016, 2017, and 2018. The legal descriptions and Property Record Files (PRF) for the Subject Property are found at the exhibits listed in the table under Procedural History below.

II. PROCEDURAL HISTORY

For each of the five parcels, in each of the three tax years at issue, the Douglas County Assessor (the County Assessor) assessed the Subject Property. Bernard J. Morello (the Taxpayer) protested each assessment to the Douglas County Board of Equalization (the County Board). The County Board reviewed the protests and determined the taxable value of the Subject Property. The parcel ID number, Commission case number, assessed value, County Board value, and the location within the exhibits of the County Board’s decision and the PRF are shown in the table below.

Parcel ID No.	Case No.	Assessed	BOE Value	Decision	PRF
0110540003	16A 0209	\$427,220	\$427,220	Exhibit 1	Exhibit 16
	17A 0193	\$379,790	\$379,790	Exhibit 6	Exhibit 21
	18A 0225	\$378,510	\$378,510	Exhibit 11	Exhibit 26

Parcel ID No.	Case No.	Assessed	BOE Value	Decision	PRF
0110890000	16A 0210	\$364,740	\$364,740	Exhibit 2	Exhibit 17
	17A 0194	\$323,570	\$323,570	Exhibit 7	Exhibit 22
	18A 0226	\$323,290	\$323,290	Exhibit 12	Exhibit 27
0113320000	16A 0211	\$104,450	\$104,450	Exhibit 3	Exhibit 18
	17A 0195	\$103,790	\$103,700	Exhibit 8	Exhibit 23
	18A 0227	\$103,700	\$103,700	Exhibit 13	Exhibit 28
0113280006	16A 0212	\$582,020	\$582,020	Exhibit 4	Exhibit 19
	17A 0196	\$475,150	\$475,100	Exhibit 9	Exhibit 24
	18A 0228	\$475,100	\$475,100	Exhibit 14	Exhibit 29
0114400002	16A 0213	\$222,180	\$222,180	Exhibit 5	Exhibit 20
	17A 0197	\$179,590	\$179,500	Exhibit 10	Exhibit 25
	18A 0229	\$178,760	\$178,760	Exhibit 15	Exhibit 30

The Taxpayer appealed each of the fifteen decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 19, 2019. Exhibits 1 through 15 and 31 through 34 were admitted. The parties stipulated to the receipt of Exhibits 16 through 30 except for photographs included in those exhibits, as described on the record.

III. STANDARD OF REVIEW

The Commission’s review of the decisions of the County Board of Equalization is de novo.¹ When the Commission considers an appeal of a decision of a county board of equalization, 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.²

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

¹ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

² *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.³

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.⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁶ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁷

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.⁸ The Commission may also take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

IV. APPLICABLE LAW

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹¹

³ *Id.*

⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁷ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁸ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹² Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹³ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶ Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.¹⁷ Agricultural or horticultural land which has an actual value reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed at the value the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses, if the land meets the statutory requirements to receive special valuation and an application for special valuation is filed and approved.¹⁸

V. FINDINGS OF FACT

Stan Mlotek testified at the hearing. Mlotek has been a licensed appraiser in Nebraska since 1984, and he also holds the State Assessor Certificate. He is employed by the Douglas County Assessor's office as a special valuation appraiser. His primary duties are the appraisal of residential property and agricultural property receiving special valuation. He has held his current position for seven years and he has more than forty years of total experience with real estate, including work as a broker.

Parcel number 0113320000¹⁹ is a 16-acre parcel including 7.83 agriculturally productive acres and 5.73 acres improved with cabins. The cabins are not owned by the Taxpayer. The 5.73 acres upon which the cabins are built were assessed at \$57,300 for tax years 2016, 2017, and 2018, but the assessed value was reduced to \$0 for tax year 2019.²⁰ Mlotek did not know why the

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Omaha Country Club* at 180, 829.

¹⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁵ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

¹⁸ Neb. Rev. Stat. §§ 77-201(3) (Reissue 2018), 77-1343, 77-1344 (2019 Supp.).

¹⁹ Case Nos. 16A 0211, 17A 0195, and 18A 0227.

²⁰ Exhibits 33, 34.

value of those acres was reduced for tax year 2019. He speculated that the value might have been reduced because of a report of flood damage, but the Taxpayer testified that he did not file a report of destroyed real property for that parcel.²¹

The Nebraska Department of Revenue, Property Assessment Division (PAD) makes use of data from the United States Department of Agriculture to classify agricultural and horticultural land into Land Capability Groupings (LCGs) based on soil type and productivity. PAD then forwards this information to county assessors to determine the value of each LCG within the county the assessor serves.

The value of all agricultural land in Douglas County is influenced by purposes or uses other than agricultural purposes, so all agricultural land in the county is eligible for special valuation.²² In order to determine the special valuation of agricultural land, Douglas County “borrows” uninfluenced sales from neighboring counties. The county relies upon sales selected by (PAD to determine the special value of agricultural and horticultural land. All of the sales selected by PAD for this purpose have been determined to be arm’s-length transactions by the county assessors in the counties from which the sales are borrowed. The County Assessor also selects comparable sales based on size and disregards “outlier” sales with unusually high or low per-acre prices.

VI. ANALYSIS

There is a presumption that the County Board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. 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. Once the presumption is rebutted, the burden remains on the Taxpayer to show by clear and convincing evidence that the County Board’s decision was unreasonable or arbitrary.

For purposes of obtaining equalization relief, the Taxpayer demonstrated that the value of 5.73 acres of one parcel of the Subject Property was reduced from \$57,300 for tax years 2016, 2017, and 2018, to \$0 for tax year 2019. However, the assessed value for real property may be different from year to year, dependent upon the circumstances.²³ For this reason, a prior year’s

²¹ See Neb. Rev. Stat. §§ 77-1307 to 77-1309 (2019 Supp.).

²² See Neb. Rev. Stat. §§ 77-1344 through 77-1348 (2019 Supp.).

²³ See *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

assessment is not relevant to the subsequent year's valuation.²⁴ For this same reason, the Commission finds that the subsequent year's assessment is not relevant to the prior year's valuation.

In past appeals, we have reviewed and reduced the assessment of the Subject Property due to concerns about the County Assessor's methodology for determining their special valuation.²⁵ Nothing in the record suggests that these methodological problems persisted or affected the assessment of the Subject Property for tax years 2016, 2017, or 2018. The Taxpayer otherwise failed to offer clear and convincing evidence to prove that the County Board's decisions were unreasonable or arbitrary.

VII. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were unreasonable or arbitrary.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Property for tax years 2016, 2017, and 2018 are affirmed.²⁶
2. The assessed values of the Subject Property are as follows:

Parcel ID	Tax Year	Value
0110540003	2016	\$427,220
	2017	\$379,790
	2018	\$378,510

²⁴ 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).

²⁵ Exhibits 31 and 32 are our decisions on the value of the parcels for tax years 2011 through 2015.

²⁶ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

Parcel ID	Tax Year	Value
0110890000	2016	\$364,740
	2017	\$323,570
	2018	\$323,290
0113320000	2016	\$104,450
	2017	\$103,700
	2018	\$103,700
0113280006	2016	\$582,020
	2017	\$475,100
	2018	\$475,100
0114400002	2016	\$222,180
	2017	\$179,500
	2018	\$178,760

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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 years 2016, 2017, and 2018.
7. This Decision and Order is effective for purposes of appeal on December 9, 2020.²⁷

Signed and Sealed: December 9, 2020

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁷ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.