

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas D. Goeglein,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case Nos: 16A 056, 17A 019

Decision and Order Reversing the
Determinations of the Otoe
County Board of Equalization

Background

1. The Subject Property consists of an 87.26 acre agricultural parcel in Otoe County, Nebraska. The legal description of the parcel is found in the Case Files.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$290,800 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 \$192,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$290,800 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$287,700 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$229,314 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$287,700 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on November 29, 2017 at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
10. Thomas D. Goeglein (the Taxpayer) was present at the hearing.
11. John R. Palmtag, Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christi Smallfoot, Otoe Deputy County Assessor were present at the hearing for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

13. The Commission's review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. At the hearing, the County Board offered a proposed 2016 value of \$285,230. This value was based upon including 4.34 acres as wasteland that had originally not been assessed as wasteland. The Taxpayer agreed with including 4.34 acres of the parcel as wasteland.
20. For tax year 2017, after a soil survey had been completed by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), the assessment of the parcel included 2.1 acres of wasteland. At the hearing, the County Board and the Taxpayer agreed that the wasteland total for tax year 2017 should be 2.95 acres. Using the property record card, the Commission finds that this would result in a taxable value of \$286,850.

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).

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.).

21. The Taxpayer provided other general information about trends in farmland markets, agricultural land values, and rental rates in Southeast Nebraska including a UNL Nebraska Farm Real Estate Market Developments Survey, 2016 and 2017. Such general information did not provide quantifiable information that could be relied upon to determine the taxable value of the Subject Property for tax years 2016 and 2017.
22. The Taxpayer provided no other information that proved by clear and convincing evidence that the taxable value as determined by the County Board was arbitrary or unreasonable.
23. The Commission finds that the wasteland acre changes as agreed upon by the Taxpayer and the County Board resulted in clear and convincing evidence that the determinations of taxable value by the County Board for tax years 2016 and 2017 were arbitrary or unreasonable.
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 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 vacated and reversed.

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 Vacated and Reversed.⁹
2. The taxable value of the Subject Property for tax year 2016 is \$285,230.
3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is Vacated and Reversed.
4. The taxable value of the Subject Property for tax year 2017 is \$286,850.
5. 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.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.

⁹ 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.

8. This Decision and Order shall only be applicable to tax years 2016 and 2017.
9. This Decision and Order is effective on December 4, 2017.¹⁰

Signed and Sealed: December 4, 2017

Robert W. Hotz, Commissioner

¹⁰ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.