

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

Donald D. Ritta,  
Appellant,

v.

Merrick County Board of Equalization,  
Appellee.

Case No: 18A 0058

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is 1.48 acres of riverbed, with a legal description of: ACC to Lots 1 & 2 32-4 LT CCFD Hamilton County S-T-R 28-13-06.
2. The Merrick County Assessor (the Assessor) assessed the Subject Property at \$1,035 for tax year 2018.
3. The Taxpayer protested this value to the Merrick County Board of Equalization (the County Board) and requested an assessed value of \$0 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$1,035 for tax year 2018.
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 26, 2019, at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2<sup>nd</sup> Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Donald D. Ritta was present at the hearing for (Taxpayer).
8. Lynelle Homolka, County Attorney, and Jen Myers, the 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>
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

<sup>1</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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).

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 Subject Property is 1.48 acres located in the main channel of the Platte River within the boundaries of Merrick County. The Taxpayer owned a property that was a contiguous parcel of land in Hamilton County until the county lines were corrected by LB 556 in March 2011, thus moving the 1.48 acres of the Subject Property to Merrick County.
17. The Taxpayer contends the Subject Property is in the main channel of the Platte River and is not accretion land as it is currently being valued by the County Assessor. The Taxpayer stated the Subject Property has been under water for the past five years and has been for 95% of the time he has owned the land. The Taxpayer feels the Subject Property has no value or wasteland value at best. The Taxpayer stated he doesn’t have any issues with the public using the river and travelling across his property but doesn’t feel he should have to be the one to pay the taxes.
18. The Assessor is required to value all real property in Nebraska as of January 1, per statute. The Assessor stated the Taxpayer does have use of the Subject Property and can enjoy the recreational benefits that it affords such as swimming.
19. The Assessor is valuing the Subject Property as accretion land and it is being valued the same as other parcels consisting of land with riverbed. Examples of how other counties

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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).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<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. Bd. of Equal. for Buffalo Cty.*, 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 Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

are valuing property similar to the Subject Property were provided by the Assessor. After reviewing these properties, the Commission found different classifications of similar land such as RWASTE, (presumably River Wasteland), WASTE, WATER (presumably river channel) and Accretion.

20. The Subject Property is an unusual property as there is no land other than what is under the water. The Assessor understandably does not have any sales of properties that are 100% under water. The only sales the Assessor has include some land with the river and would thus be considered accretion land. The Commission is convinced the Subject Property meets the definition of Wasteland, in part “marshes, badlands, large deep gullies (including streambeds and banks).”<sup>9</sup>
21. As Wasteland, the Subject Property should be valued at \$445 (Merrick County Wasteland value was \$300 in 2018 per spreadsheet provided by the Assessor).  $\$300 \times 1.48 = \$444$  rounded to \$445.
22. 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.
23. 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.

## 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 2018, is affirmed/vacated and reversed.  
The taxable value of the Subject Property for tax year 2018 is: \$445.
2. 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 (Reissue 2018).
3. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
4. Each Party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2018.
6. This Decision and Order is effective on August 2, 2019.

Signed and Sealed: August 2, 2019

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James D. Kuhn, Commissioner

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<sup>9</sup> 350 Neb. Admin. Code, Ch. 14 § 002.54.