

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

Sandra J. Zwiener,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 18A 0131

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a 53.28 acre parcel, with a legal description of: 6-8-10 Tract in NW1/4 & SW1/4 53.28 AC South Russell.
2. The Otoe County Assessor (the Assessor) assessed the Subject Property at \$204,980 for tax year 2018.
3. Sandra J. Zwiener protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$155,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$204,980 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 May 22, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Sandra J. & Kenneth Zwiener (jointly, the Taxpayers) were present at the hearing.
8. Sarah Wiltse, Deputy County Attorney, and Christina Smallfoot, 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 Taxpayers stated they purchased the Subject Property for use as agricultural land. The Taxpayers stated the land is currently comprised of alfalfa, native grass and trees. Two cuttings of alfalfa were harvested and sold in 2017. The native grass may be cut or grazed by the Taxpayers; they have yet to determine whether they will purchase livestock to graze the property or if they will cut it. Some tree cutting is still being done to the Subject Property to add acres for alfalfa or grass, and parts of the property are too steep to allow for tree cutting or farming. The Taxpayers stated there are two buildings on the property: a 10x12 foot storage shed (not in dispute) and a 30x40 foot equipment shed with dirt floors and no finish. There are no utilities on the Subject Property.
17. The Taxpayers stated the Subject Property had been assessed at agricultural property in past and did not understand why it had been changed to Recreational. The Taxpayers testified that the overwhelming predominate use of the Subject Property is for agricultural use and provided Farm Service Agency (FSA) papers showing the number of acres they certified. The Taxpayers have not allowed hunting or recreational camping on the Subject Property. The Taxpayers stated that they will occasionally stay in a camper on the

---

<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).

- property while planting or harvesting due to the fact that the Subject Property is about a 25 minute drive from their home, which makes it inconvenient to travel back and forth.
18. The Assessor stated the agricultural use of the Subject Property is incidental to the main usage of the property, which she feels is recreational in nature. The Assessor stated that while some parcels may look like agricultural parcels they are in reality recreational by definition, citing Nebraska Revised Statute 37-729.<sup>9</sup> She also stated that the smaller size of the Subject Property lends itself to more of a recreational usage.
  19. The Assessor conceded the equipment shed is incorrectly listed as a “very good” quality when in reality it should be an “average” quality. The amount of value reduction this has on the value of the equipment shed was unknown to the Assessor. The Taxpayers provided a spreadsheet comparing eight equipment sheds cost per square foot to the equipment shed located on the Subject Property. The Assessor did not argue that these sheds were not comparable. Comparing the price per square foot of comparable equipment sheds most similar with the Subject Property, we find four equipment sheds with dirt floors and a per square foot value between \$2.93 and \$9.85. The median level of value for the comparable equipment sheds is \$7.02 per square foot. Two of the comparables brought by the Taxpayers have the same dimensions as the Subject Property’s shed but have concrete floors, and the per square foot value of these comparables is \$7.09 and \$5.73 respectively. The Commission used \$7.02 per square foot for valuing the equipment shed after considering the age, size and flooring of all the comparables. The method used to value the equipment shed is  $\$7.02 \times 1,200 = \$8,424$ .
  20. The Commission is persuaded by evidence and testimony the Subject Property is being used for agricultural purposes and should be valued as agricultural land. The Commission used the “Agland Inventory” sheet provided by the Taxpayers to ascertain the number of acres of each soil class and then used the Assessor’s 2018 acre value sheet to arrive at the new land value for the Subject Property (located in the 8000 neighborhood):

4D1 – 5.21 acres @ \$3,500/acre =	\$ 18,235
4D – 1.4 acres @ \$3,200/acre =	\$ 4,480
2D1 – 4.57 acres @ \$4,300/acre =	\$ 19,651
4G1 – 10.97 acres @ \$1,750/acre =	\$ 19,198
4G – 1.51 acres @ \$1,550/acre =	\$ 2,341
2G1 – 4.97 acres @ \$2,180/acre =	\$ 10,835
GRT1 (4T1) – 8.6 acres @ \$1,000/acre =	\$ 8,600
GRT1 (4T) – 11.34 acres @ \$950/acre =	\$ 10,773

---

<sup>9</sup> We note that the definition of “recreational” found in Neb. Rev. Stat. §37-729 is limited in applicability to Neb. Rev. Stat. §§ 37-729 to 37-736. The applicable definition for our purposes is 350 Neb. Admin. Code Ch. 10 §002.15J: “Recreational means all parcels predominantly used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of these uses are fishing, hunting, camping, boating, hiking, picnicking, or having an access or view that simply allows diversion, entertainment, and relaxation.” Agricultural land is defined as “a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes[.]” “Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state[.]” Neb. Rev. Stat. §77-1359 (Reissue 2018).

2T1 – 3.71 acres @ \$1,200/acres =	\$ 4,452
<u>FMSITE – 1 acre @ \$1,500/acre =</u>	<u>\$ 1,500</u>
Total new land value	\$100,065

21. The Taxpayers have produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayers have 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$100,065
<u>Improvements</u>	<u>\$ 8,684</u>
Total	\$108,749

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 (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 year 2018.
7. This Decision and Order is effective on June 7, 2019.

Signed and Sealed: June 7, 2019

---

James D. Kuhn, Commissioner