

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

Duane J. Dowd,

Dowd Grain Co.,  
Appellants,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 18C 0504, 18C 0506, 18R 0381,  
18R 0382

Case No. 18C 0505

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Properties are vacant land classified by the Douglas County Assessor (the Assessor) as Commercial or Residential, with legal descriptions of: 90<sup>th</sup> & Boyd Place Lot 3 Block 0 Irreg 11.634 AC (18C 0504), North 90<sup>th</sup> Plaza Replat 2 Lot 1 Block 0 Irreg 1.93 AC (18C 0505), 90<sup>th</sup> & Boyd Place Lot 2 Block 0 Irreg 2.077 AC (18C 0506), Keystone View Add Lot 16 Block 0 275x330 (18R 0381), Keystone View Add Lot 15 Block 0 – Ex E 7 Ft & Estly 1295 Sq Ft – Lt 15 (18R 0382).
2. The Assessor assessed the Subject Properties at \$202,500 (18C 0504), \$168,200 (18C 0505), \$180,900 (18C 0506), \$47,900 (18R 0381) and \$34,200 (18R 0382) for tax year 2018.
3. Duane J. Dowd and Dowd Grain Co., (collectively, the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessments for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$202,500 (18C 0504), \$168,200 (18C 0505), \$180,900 (18C 0506), \$47,900 (18R 0381) and \$34,200 (18R 0382) for tax year 2018.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 2, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Matthew Dowd was present at the hearing for the Taxpayer.
8. Stan Mlotek (the Appraiser) was 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 a 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 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 properties under appeal are all vacant properties currently used for agricultural purposes. The Taxpayer was unaware the parcels would qualify for a reduced value if they were being used for agricultural purposes. The Taxpayer stated that all these properties have been being farmed since 2010.

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<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).

<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).

17. The Appraiser visited the properties for a 2019 appeal and found agricultural use as well as some portions being in a floodway. The Appraiser stated he measured the Subject Properties and arrived at an Agricultural use value for the 2019 protest. The Appraiser was unaware of any of the farming practices in the previous years and had not reviewed the Subject Properties for the 2018 appeals.
18. The Commission is convinced the Subject Properties were used for agriculture as of the assessment date and should be assessed accordingly. A spreadsheet was provided during the hearing showing that the Subject Properties' values for 2018 were originally the same as 2019; however, the 2019 values were adjusted lower to reflect the agricultural usage after being reviewed by the Appraiser. The Commission finds that the 2018 values should mirror the 2019 values placed on the Subject Properties after the Appraiser's review.
19. 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.
20. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

**ORDER**

**IT IS ORDERED THAT:**

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2018 are vacated and reversed.
2. The taxable value of the Subject Properties for tax year 2018 is:

<u>Case</u>	<u>Total</u>
18C 0504	\$173,700
18C 0505	\$133,600
18C 0506	\$161,300
18R 0381	\$ 35,900
18R 0382	\$ 25,600

3. This Decision and Order, if no further action is taken, 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 year 2018.
7. This Decision and Order is effective on July 20, 2020.

Signed and Sealed: July 20, 2020

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James D. Kuhn, Commissioner