

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Scott A. Bickford,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case Nos: 19A 0115 & 19A 0116

Decision and Order Reversing
County Board of Equalization

Case Nos: 19A 0117, 19A 0118 &
19A 0119

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Properties are agricultural parcels, with a legal description of:

19A 0115	19A 00116	19A 0117	19A 0118	19A 0119
12-10-11 NW1/4 NW1/4 Exc Hwy & Thoren Subd & PT Mineral Int (33.15)	12-10-11 NE1/4 NW1/4 Exc PT Mineral Int (40)	12-10-11 L5 NW1/4 NE1/4 (20)	12-10-11 S1/2 NE1/4 (80)	12-10-11 S1/2 NW1/4 Exc Hwy (77.50)

2. The Cass County Assessor assessed the Subject Properties at

2019 Assessed	2019 Assessed	2019 Assessed	2019 Assessed	2019 Assessed
19A 0115	19A 0116	19A 0117	19A 0118	19A 0119
\$91,198	\$111,665	\$53,000	\$211,350	\$205,375

3. Scott A. Bickford (the Taxpayer) protested these values to the Cass County Board of Equalization (the County Board) and requested assessed values of:

Requested	Requested	Requested	Requested	Requested
19A 0115	19A 0116	19A 0117	19A 0118	19A 0119
\$67,654	\$66,840	\$31,200	\$124,800	\$120,900

4. The County Board determined that the taxable value of the Subject Properties was:

BOE	BOE	BOE	BOE	BOE
19A 0115	19A 0116	19A 0117	19A 0118	19A 0119
\$91,198	\$111,665	\$53,000	\$211,350	\$205,375

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 September 28, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Scott A. Bickford was present at the hearing.
8. Teresa Salinger (the Assessor) and Dana Long (the Appraiser) 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."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
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

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

² 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).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

Findings of Fact & Conclusions of Law

16. The Taxpayer stated the Subject Properties are not farmed and no income is being generated from them. The Taxpayer stated he is paying more in taxes than the neighbors; however, no evidence was provided to show values or taxes of neighboring properties. The Taxpayer did not provide and property record files (PRF) for any comparable properties for the Commission to analyze to see if any comparable properties are being valued differently than the Subject Properties.
17. The Taxpayer mentioned that some of the neighboring parcels had not changed in value for a number of years; however, the Assessor stated the neighboring parcels are commercial or agricultural properties with crops and they are assessed differently than the Subject Properties, which are recreational.
18. The Assessor stated the Subject Properties are all assessed as recreational land and are valued at \$2,650 per acre, the same as all recreational land in Cass County. The Assessor stated the Subject Properties are mostly trees and grass with no agricultural usage.
19. The Appraiser reviewed the Subject Properties and recommended adjustments to the values of the Subject Properties for Case Nos. 19A 0115 and 19A 0116. Each of these parcels have a one-acre site value of \$6,000. The Appraiser recommended reducing that value to \$2,000 and lowering or removing the improvement values due to condition issues with the buildings.
20. 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 in case numbers 19A 0115 and 19A 0116.
21. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions in case numbers 19A 0117, 19A 0118 or 19A 0119.
22. 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 in case numbers 19A 0115 and 19A 0116.
23. The Taxpayer has not 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 affirmed in case numbers 19A 0117, 19A 0118 and 19A 0119.

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 2019 are vacated and reversed for case numbers 19A 0115 and 19A 0116.

2. The taxable value of the Subject Properties in Case Nos. 19A 0115 and 19A 0116 for tax year 2019 is:

19A 0115	19A 0116
\$87,198	\$105,755

3. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2019 are affirmed for case numbers 19A 0117, 19A 0118 and 19A 0119.
4. The taxable value of the Subject Properties in Case Nos. 19A 0117, 19A 0118, and 19A 0119 for tax year 2019 is:

19A 0117	19A 0118	19A 0119
\$53,000	\$211,350	\$205,375

5. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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.
8. This Decision and Order shall only be applicable to tax year 2019.
9. This Decision and Order is effective on January 20, 2022.

Signed and Sealed: January 20, 2022

James D. Kuhn, Commissioner