

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

Terry L. Jessen,  
Appellant,

v.

Garden County Board of Equalization,  
Appellee.

Case No: ~~19C-0011~~ 19A 0009 & 19A 0010

Amended Decision and Order Affirming  
County Board of Equalization

This Amended Decision and Order is issued to correct an error in the caption.

**Background**

1. The Subject Properties are agricultural land, with a legal description of: E ½ 34-15-44 310.68 Acres (19A 0009) and S ½ 35-15-44 313.95 Acres (19A 0010).
2. The Garden County Assessor (the Assessor) assessed the Subject Properties at \$231,445 (19A 0009) and \$232,187 (19A 0010) for tax year 2019.
3. Terry Jessen (the Taxpayer) protested this value to the Garden County Board of Equalization (the County Board) and requested an assessed value of \$226,427 (19A 0009) and \$228,193 (19A 0010) for tax year 2019.
4. The County Board determined that the taxable value of the Subject Properties were \$231,445 (19A 0009) and \$232,187 (19A 0010) for tax year 2019.
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 July 27, 2020, at Hampton Inn & Suites Hotel, 301 W. Hwy 26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Terry Jessen was present at the hearing.
8. Phil Pierce, Garden County Attorney, and Janet Shaul (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 a determination of the County Board of Equalization is de novo.<sup>2</sup>

<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).

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 Taxpayer stated there is one issue with the Subject Properties, “water holes.” The Subject Properties have low spots in various places throughout the properties where water will stand and the land will be unusable to grow crops.
17. The Taxpayer would like to have the “water holes” valued as wasteland which was \$50 per acre for the 2019 tax year. The Taxpayer stated he has rented the farmland out and no crops were harvested from 2016 through 2018 in the “water holes” area of the properties.
18. The Assessor stated the Subject Properties are being valued the same as all the other agricultural land in Garden County. The “water holes” area of the Subject Properties are coded as an LCG (land capability group) 1661 soil type that has a definition that says, in part, “frequently ponded.” The Assessor asserted that Garden County has literally hundreds of farms that have “water holes” some years, and some years when conditions are dry, they won’t have any “water holes.” The Assessor stated that all agricultural properties in Garden County that have the LCG of 1661 are all being assessed the same.

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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).

19. 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.
20. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2019 are affirmed.
2. The taxable value of the Subject Properties for tax year 2019 are:

Total	<b><u>19A 0009</u></b>	\$231,445
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Total	<b><u>19A 0010</u></b>	\$232,187
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3. This Decision and Order, if no further action is taken, shall be certified to the Garden County Treasurer and the Garden 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 2019.
7. This Decision and Order is effective on November 6, 2020.

Signed and Sealed: November 10, 2020

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James D. Kuhn, Commissioner