

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

John C. Gable Living Trust, John C. Gable,  
Trustee,  
Appellant,

v.

Scotts Bluff County Board of Equalization,  
Appellee.

Case Nos: 20A 0001 & 21A 0036

**DECISION AND ORDER  
AFFIRMING THE DECISIONS OF THE  
SCOTTS BLUFF COUNTY BOARD OF  
EQUALIZATION**

Background

1. The Subject Property consists of a rural parcel of agricultural land with improvements with a legal description of PT SW 34-23-54 (185.79).
2. The Scotts Bluff County Assessor assessed the Subject Property at \$372,619 for tax year 2020 and \$331,744 for tax year 2021.
3. John C. Gable Living Trust, John C. Gable, Trustee (the Taxpayer) protested these values to the Scotts Bluff County Board of Equalization (the County Board) and requested assessed values of \$232,415 for tax year 2020 and \$159,108 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$318,900 for tax year 2020 and \$323,774 for tax year 2021.
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 20, 2021, at Hampton Inn & Suites, 301 US-26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. John C. Gable was present at the hearing.
8. Angela Dillman (the Assessor) and Kirk Fellhoelter (Deputy County Attorney) 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>
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

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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).

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 he knows of comparable properties near the Subject Property that have sold for less per acre than his current per acre assessment. No property record files (PRF) were provided to the Commission for comparison analysis. The Taxpayer stated the Subject Property has a drainage ditch that is 50 feet wide and one mile long that should have no value, along with a roughly six-acre portion of his property referred to as the “knoll” that should also have no value. The Taxpayer stated that the County Assessor’s acre count is incorrect, but he provided no evidence to support a different number of acres.
17. The Taxpayer stated his single wide trailer has bad carpet, bad plumbing and is in overall poor shape and should be valued no more than \$5,000. The Taxpayer provided no evidence of any damage to the trailer and no supporting evidence for his opinion of value.
18. The Assessor stated the Subject Property has been reviewed and she believes the correct number of acres are being assessed. The Assessor stated the drainage ditch is being valued as a canal at \$100 per acre like all other similar properties in the county. The Assessor stated the Subject Property is being valued correctly in accordance with state statute.

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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 Assessor stated the County Board lowered the 2021 improvement value of the Subject Property to account for the stated issues with the trailer home.
20. 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.
21. 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.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 and 2021 is:

<b>Total</b>	<b><u>2020</u></b>	<b>\$318,900</b>
<b>Total</b>	<b><u>2021</u></b>	<b>\$323,774</b>

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 years 2020 and 2021.
7. This Decision and Order is effective on January 31, 2022.

Signed and Sealed: January 31, 2022

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James D. Kuhn, Commissioner