

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

Larry Stuckey,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 15A 0017

Decision and Order Affirming Otoe  
County Board of Equalization

Background

1. A Single Commissioner hearing was held on February 16, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
2. Larry Stuckey was present at the hearing on behalf of himself (Taxpayer).
3. John Palmtag, Deputy Otoe County Attorney, was present for the County Board of Equalization (the County Board).
4. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$261,200 for tax year 2015.
5. The Taxpayer protested this value to the County Board and requested an assessed value of \$186,157 for tax year 2015.
6. The County Board determined that the taxable value of the Subject Property was \$261,200 for tax year 2015.
7. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
8. The Subject Property is an agricultural parcel improved with a drying bin and two pole buildings, with a legal description of: N ½ NW ¼ 2-9-12 72.20 acres, Otoe County, Nebraska.

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>

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *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 questioned why the assessed valuation of the Subject Property was within \$1,000 of the purchase price. The Taxpayer purchased the Subject Property on December 10, 2014 for \$262,193 at Public Auction. He asserted that the assessed value of the Subject Property should be 71% (the acceptable range for agricultural land in Otoe County for 2014) of the purchase price.
17. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).
18. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2009).
19. The Nebraska Court of Appeals has held that: “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue;

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<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. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”<sup>9</sup>

20. The County Assessor explained how the 2015 Agricultural Valuations were established. She stated that she does not determine the valuations using one sale and for 2015 used 110 arm’s length transactions. She stated that she used a three year study period and the Subject Property was not included in the study period that ended September 30, 2014.
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.
22. 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 Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$256,450
<u>Improvements</u>	<u>\$ 4,750</u>
Total	\$261,200

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 (2014 Cum. Supp.).
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 2015.
7. This Decision and Order is effective on February 18, 2016.

Signed and Sealed: February 18, 2016

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Nancy J. Salmon, Commissioner

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<sup>9</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

