

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald D. Brownlee,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 15A 0170 & 15A 0171

Decision and Order
Affirming the Decisions
of the Otoe County Board of Equalization

Background

1. The Subject Property in Case No. 15A-0170 is a 160 acre parcel of agricultural land, with a legal description of: 33-8-9 SE ¼ 160 Ac South Palmyra.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$707,150 for tax year 2015.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$591,300 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$707,150 for tax year 2015.
5. The Subject Property in Case No. 15A-0171 is an 80 acre parcel of agricultural land, with a legal description of: 33-8-9 W1/2 SW1/4 80 Ac South Palmyra.
6. The County Assessor assessed the Subject Property at \$306,520 for tax year 2015.
7. The Taxpayer protested this value to the the County Board and requested an assessed value of \$248,950 for tax year 2015.
8. The County Board determined that the taxable value of the Subject Property was \$304,220 for tax year 2015.
9. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on November 23, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
11. Donald D. Brownlee (Taxpayer) was present at the hearing.
12. John Palmtag, Deputy Otoe County Attorney was present for the County Board.
13. Therese Gruber, the County Assessor was present. Christy Smallfoot, Deputy County Assessor was also present

Applicable Law

14. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
15. The Commission's review of the determination of the County Board of Equalization is de novo.²
16. 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
17. 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
18. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
19. 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
20. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. The Subject Properties were determined by the County Assessor to be in Market Area 8000 of Otoe County. The agricultural acres were assessed per land capability groups⁹ consistent with the assessments of other similar properties in the same market area of Otoe County.

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² 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).

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

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. 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁹ See generally, 350 NAC Ch. 14 §004.08 (Rev. 3/15/09).

2. The Taxpayer's first claim on appeal is that the assessed value of the Subject Properties as compared to other comparable properties in Otoe County has had a greater percentage increase for each of the four consecutive tax years 2012 to 2015.
3. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹ It follows that the comparative percentage increases from the prior year's assessments are also not dispositive of the actual value of property for the current tax year.
4. In addition, a determination of actual value must be done using the sales comparison approach, the income approach, the cost approach, or any other professionally accepted mass appraisal method.¹² Comparison of assessed values of other properties is not identified as an accepted approach for finding actual value for the purposes of mass appraisal.¹³
5. The Taxpayer's second claim is that the quality of the Subject Properties is less than other properties in the same area.
6. The Taxpayer stated the Subject Properties contained "poor land" that was not as productive as other land in the area. He also stated that its soils were improperly categorized by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS). He did not provide further information to prove these assertions.
7. The Taxpayer's third claim is that two other properties in the area were sold for less than the assessed value of the Subject Properties.
8. At the hearing, the Taxpayer stated that there were two recent sales in the area. One involved 20 acres of land at \$3,200 per acre and one involved 40 acres of land at \$3,400 per acre.
9. The Taxpayer did not provide property record cards or any other documentation for the two properties that would provide a comparison of these sales to the actual value of the Subject Properties.
10. The Taxpayer's fourth and final claim is that the property is overvalued compared to agricultural property in Lancaster County.
11. The Taxpayer did not provide data or information that supported this claim. In addition, Lancaster County is a different taxing jurisdiction from Otoe County.
12. 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.

¹⁰ *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

13. 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 are Affirmed.
2. The taxable value of the Subject Property for tax year 2015 in Case No. 15A-0170 is:

Land	\$623,450
<u>Improvements</u>	<u>\$ 83,700</u>
Total	\$707,150

3. The taxable value of the Subject Property for tax year 2015 in Case No. 15A-0171 is:

Land	\$304,220
<u>Improvements</u>	<u>\$ 0</u>
Total	\$304,220

4. 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.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2015.
8. This Decision and Order is effective on December 5, 2016.

Signed and Sealed: December 5, 2016

Robert W. Hotz, Commissioner