

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

Douglas E. Parde,  
Appellant,

v.

Gage County Board of Equalization,  
Appellee.

Case No: 15A 0225 and 0226

Decision and Order Affirming Gage  
County Board of Equalization

**Background**

1. The Subject Property is two parcels of agricultural land improved with a dwelling and outbuildings, with legal descriptions of: 15A 0025 E ½ SW ¼ 16-5-8, 80 ac and 15A 0026 W ½ SW ¼ 16-5-8, 80 ac, Gage County, Nebraska.
2. The Gage County Assessor (the County Assessor) assessed the Subject Property for case 15A 0225 at \$555,465 and case 15A 0226 at \$419,595 for tax year 2015.
3. The Taxpayer protested these values to the Gage County Board of Equalization (the County Board) and requested an assessed value of \$450,000 in case 15A 0225 and \$300,000 in case 15A 0226 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$519,770 in case 15A 0225 and \$419,595 in case 15A 0026 for tax year 2015.
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 March 15, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
7. Robert M. Schafer, legal counsel, was present at the hearing for the Taxpayer (Taxpayer).
8. Patricia Milligan, Gage County Assessor was 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 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 asserted that the Subject Property is irrigated from a pond located on a parcel across the road. He asserted that the 2015 valuation of the irrigated acres should be somewhere between the irrigated value of parcels that have a water supply that is located on the property and has an unlimited water supply and the dryland valuation. He asserted that the water from the pond is limited.
17. The Taxpayer provided the actual yield rates for the Subject Property from 2006 to 2015, and the average yield rate of irrigated corn was 164 bu/acre over that time period. He did not provide the Commission with records showing the yield on a parcel with unlimited irrigation. He was unable to quantify to the Commission how much the productivity of the Subject Property would affect the sale price.
18. The Taxpayer asserted that since there was limited water available to irrigate the Subject Property, the irrigated acres should be assessed at a value less than irrigated acres. It is his opinion that the value for parcels with a limited water source should be valued at 75% of the value of land that have an unlimited water source. The Commission notes that

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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) (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.).

there was no evidence of sales of acres with similar water availability limitations to support this assertion.

19. The County Assessor explained that all agricultural land and horticultural land in Gage County was assessed based upon LCG's (soil types) and recent sales. She testified there were no recent comparable sales with the same limited water source and with no well water irrigation. She stated that there were 75 sales of any agricultural land and horticultural land in Market Area One for the relevant three year time frame.
20. The County Assessor explained that in the case of the Subject Property, she gave a 15% discount to the irrigated values because of the water source being located on a different parcel. The Commission notes on the property records that this 15% discount has been applied to the irrigated acres listed.
21. The Commission also finds that there is insufficient evidence to determine the difference, if any, in the actual value of agricultural land and horticultural land irrigated from a limited water source as compared to agricultural land and horticultural land irrigated from an unlimited water source. While it is possible that the different source of water results in different valuations that difference would need to be established by market evidence. No such market evidence was provided to the Commission
22. The Taxpayer asserted that the 2015 valuation of land portion of the Subject Property should be \$600,000. He provided the Commission with a worksheet of sales he asserted were comparable to the Subject Property. He took an average acre price to arrive at the proposed valuation. He did not provide the Commission with the Property Records. The Commission is unable to determine if these parcels are truly comparable to the Subject Property.
23. The Taxpayer provided the Commission with two sales of agricultural land in Johnson County from March 2016. He asserted that these were arms-length transactions and located just six miles from the Subject Property. One sold for \$5600 per acre and the other sold for \$5400. He asserted that Subject Property should have an assessed valuation somewhere between these two sales of irrigated land and the dryland valuation in Gage County. He asserted that he should not be compared with the sales that are at least 10 miles from the subject property in Gage County. The Commission notes that several of the soil symbols on the two sales in Johnson County are not the same as the soil symbols and LVG's as on the Subject Property. The Commission notes that the Subject Property has several acres of #1 soil where the alleged comparables have more #2 soils.
24. According to Nebraska Statute §77-1371, "[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value." Further, generally accepted mass appraisal techniques require that after selecting comparable sales, the assessor must "[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each

sale to reflect how it differs from the subject property or eliminate that property as a comparable.”<sup>9</sup>

25. Without quantified adjustments to the comparable property for all of the different physical characteristics, the Taxpayer’s assertions based upon the comparison of the alleged comparable property and the Subject Property are given little weight.
26. The Taxpayer did not quantify a convincing opinion of the actual value of the Subject Property, and an examination of the rest of the evidence in the case indicates that there is not clear and convincing evidence that the County Board’s determination was arbitrary or unreasonable.
27. 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.
28. 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 parcel of the Subject Property found in Case No. 15A-0225 for tax year 2015 is: \$519,770.
3. The taxable value of the parcel of the Subject Property found in Case No. 15A-0226 for tax year 2015 is: \$419,595.
4. This Decision and Order, if no further action is taken, shall be certified to the Gage County Treasurer and the Gage 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 March 22, 2016.

Signed and Sealed: March 22, 2016

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Nancy J. Salmon, Commissioner

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<sup>9</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-02.

