

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

Edward G. Parde,  
Appellant,

v.

Gage County Board of Equalization,  
Appellee.

Case No: 15A 0227

Decision and Order Affirming Gage  
County Board of Equalization

Background

1. The Subject Property is an unimproved agricultural parcel, with a legal description of: SE 1/4 16-5-8 EXC 24.4 ac Tract, 135.60 Ac, Gage County, Nebraska.
2. The Gage County Assessor (the County Assessor) assessed the Subject Property at \$615,085 for tax year 2015.
3. The Taxpayer protested this value to the Gage County Board of Equalization (the County Board) and requested an assessed value of \$508,500 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$615,085 for tax year 2015.
5. The Taxpayer appealed the determination 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 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>
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

<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).

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

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 out of a pond that is not located on the Subject Property and not owned by the Taxpayer. He asserted that the parcel would sell for the dry land price and should be assessed as dry land and not irrigated land. He agreed with the number of acres the County is assessing as irrigated, but stated that there was limited water.
17. The County Assessor explained that the Subject Property was valued using the Sales Comparison Approach. She provided the Commission with eight dryland and irrigated sales and explained that 75 sales were used to set the 2015 valuations for Market Area 1. She noted that she sets the value using the soil types set by the Soil Conservation Service and the LCG’s assigned to those soil types by the Property Tax Administrator.
18. The County Assessor explained that she gives the irrigated acres on the Subject Property a 15% discount since the water source is located on a different parcel. She applies the discount to all the parcels that have water from a source located on a different parcel.
19. As to the Taxpayer’s assertion that since there was only water available from a neighboring pond to irrigate the Subject Property, 42.23 acres should be assessed at dryland values. The Commission notes that there was no evidence of sales of acres with similar water availability limitations to support this assertion. As to the Taxpayer’s assertion that the 42.23 acres should be classified as dryland rather than as irrigated, there

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<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.).

was evidence to conclude that the land was *primarily used* for crop production *with* irrigation and would therefore not be properly classified as dryland cropland.<sup>9</sup>

20. Based upon the foregoing, the Commission finds that the 42.23 acres were not primarily used for crop production without irrigation and it was appropriate that they were not classified as dryland.
21. 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.
22. 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.
23. 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: \$615,085.
3. 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.).
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 March 22, 2016.

Signed and Sealed: March 22, 2016

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Nancy J. Salmon, Commissioner

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<sup>9</sup> Dryland cropland is land that is primarily used for crop production *without* irrigation. 350 Neb. Admin. Code, ch. 14 §002.21A (03/09)(emphasis added).

