

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

Robert F. Wortman,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 14R 167

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is a 16.08 acre agricultural parcel with a home site and outbuildings and a legal description of: Lands Sec-Twn-Rge 28-16-12 –Ex SE 90 S 300 FT & Ex Pts Taken for Rd- Irreg N 868.9 W 896.6 Ft Tax Lt 1 Parcel 21 – 16.08 AC, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$116,450 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$96,180 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$116,450 for tax year 2014.
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 November 23, 2016, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Robert F. Wortman was present at the hearing (Taxpayer).
8. Stan Mlotek of the Douglas County Assessor/Register of Deeds office (the Appraiser) 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 alleged that the water flow through a drainage easement on the Subject Property reduced the value of the agricultural land component of the property.
17. The information presented to the Commission demonstrated that the .955 acres of agricultural and horticultural land located in the drainage easement on the Subject Property should be assessed as wasteland for tax year 2014.
18. The Appraiser agreed that the .955 acres of agricultural and horticultural land located in the drainage easement on the Subject Property should be assessed as wasteland for tax year 2014. The Appraiser stated that wasteland acres were assessed at \$150 per acre for tax year 2014.
19. Based on the information presented at the single commissioner hearing, the Commission finds that the value of the land component of the Subject Property for tax year 2014 is \$74,000.
20. The Taxpayer alleged that the outbuildings on the Subject Property were overvalued.

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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(9) (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.).

21. The Taxpayer demonstrated that only the 960 square foot outbuilding identified as the Implement Shed in the Property Record File was still in usable condition, that all of the other outbuildings had been removed from the Subject Property or in a condition which contributed no value to the Subject Property.
22. The Appraiser indicated that based on all of the information presented at the hearing he agreed that the assessed value for all outbuildings other than the 960 square foot outbuilding identified as the Implement Shed should be removed from the total assessed value of the improvements on the Subject Property for tax year 2014.
23. The information before the Commission shows that the value of the outbuildings that should be removed from the assessed value of the Subject Property is \$11,290.
24. The Taxpayer alleged that the County did not properly account for the condition of the home on the Subject Property.
25. The information presented to the Commission demonstrates that the County's quality and condition rating of the home as well as the depreciation applied accurately take into account the characteristics of the home located on the Subject Property.
26. Based on the information presented to it at the single commissioner hearing the Commission finds that the total assessed value of the improvement component of the Subject Property for tax year 2014 is \$29,010.
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 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 vacated.

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 2014 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 74,000
<u>Improvements</u>	<u>\$ 29,010</u>
Total	\$103,010

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 2014.
7. This Decision and Order is effective on February 6, 2017.

Signed and Sealed: February 6, 2017

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Steven A. Keetle, Commissioner