

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

Brad & Mary Moser,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case Nos: 16A 0217, 16A 0218, 17A 0202  
& 17A 0203

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

**For the Appellant:**  
Mary Moser,  
*Pro Se*

**For the Appellee:**  
Daniel J. Zieg,  
Deputy Lancaster County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property for Case Nos. 16A 0217 and 17A 0202 is a 76.17 acre parcel located in Lancaster County, Nebraska (Parcel One). The Subject Property for Case Nos. 16A 0218 and 17A 0203 is a 78.95 acre parcel, also located in Lancaster County, Nebraska (Parcel Two). The legal descriptions and property record cards for the Subject Property are found at Exhibits 5 and 6 (Parcel One) and Exhibits 7 and 8 (Parcel Two).

**II. PROCEDURAL HISTORY**

The Lancaster County Assessor (the County Assessor) determined that the assessed value of Parcel One was \$288,100 for tax year 2016<sup>1</sup> and \$284,900 for tax year 2017.<sup>2</sup> The County Assessor determined that the assessed value of Parcel Two was \$300,400 for tax year 2016<sup>3</sup> and \$296,100 for tax year 2017.<sup>4</sup>

The Taxpayer protested each of these values to the County Board, requesting an assessed value of 266,371 for Parcel One for each of the tax years 2016 and 2017,<sup>5</sup> and an assessed value

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<sup>1</sup> Ex. 1:1.

<sup>2</sup> Ex. 6:52.

<sup>3</sup> Ex. 3:1.

<sup>4</sup> Ex. 4:1.

<sup>5</sup> Exs. 5:1, 6:1.

of 265,387 for Parcel Two for each of the tax years 2016 and 2017.<sup>6</sup> The County Board issued decisions finding taxable values consistent with those determined by the County Assessor.<sup>7</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). On August 20, 2018, the County Board filed a Notice of Intent to Seek and Prove a Higher Taxable Value.<sup>8</sup> The Commission held a hearing on September 19, 2018, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1 through 34 and 36 through 50 were admitted. Exhibits 35, 51, and 52 were not admitted for the reasons described on the record.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>9</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>10</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>11</sup>

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

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<sup>6</sup> Exs. 7:1, 8:1.

<sup>7</sup> Exs. 1:1, 6:53, 3:1, 4:1.

<sup>8</sup> See Neb. Admin. Code Ch. 5 §016.02A (06/2011).

<sup>9</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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>10</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>11</sup> *Id.*

arbitrary.<sup>12</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>13</sup>

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>14</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>15</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>16</sup> The Commission may take notice of judicially cognizable facts and general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>17</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>18</sup>

#### IV. VALUATION & EQUALIZATION

##### A. Law

Under Nebraska law,

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.<sup>19</sup>

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section

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<sup>12</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>13</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>14</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>15</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>16</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

77-1371, (2) income approach, and (3) cost approach.<sup>20</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>21</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of the Nebraska Revised Statutes and has the same meaning as assessed value.<sup>22</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>23</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>24</sup> Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>25</sup>

## **B. Facts & Analysis**

Six witnesses testified at the hearing. Mary Moser, George Tesar, Jeff Johnson, Tim Sealock, and Norman Agena were called by the Taxpayer. Thomas Kubert was called by the County Board.

Ms. Moser testified that she and her husband purchased both parcels of the Subject Property for a total of \$192,000 in 2003. According to her testimony, rising commodity prices for corn and soybeans drove market prices for farmland up until approximately 2012, when commodity prices began to decline, but the assessed value of the Subject Property held steady or continued to increase through the tax years at issue. The Taxpayer's central contentions were that the Subject Property was overvalued compared with similar properties in the same market area, that electric power lines on the property made it unsuitable for irrigation, and that a natural gas pipeline running beneath the property made the property more difficult to farm, and thus, less desirable for potential buyers.

Mr. Tesar has been a General Certified appraiser in the State of Nebraska since 1996, and he prepared an appraisal report on each parcel of the Subject Property.<sup>26</sup> The appraisals were prepared in accordance with International Association of Assessing Officers (IAAO) standards and are retrospective to the relevant valuation dates for each of the two parcels. Mr. Tesar

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<sup>20</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>21</sup> *Omaha Country Club* at 180, 829.

<sup>22</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>23</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

<sup>25</sup> Neb. Rev. Stat. §77-201(2) (Reissue 2018).

<sup>26</sup> These reports can be found at Exs. 41 and 42.

concluded that Parcel One had an actual value of \$340,500 for tax year 2016 and an actual value of \$364,300 for tax year 2017; he concluded that Parcel Two had an actual value of \$345,950 for tax year 2016 and an actual value of \$366,170 for tax year 2017.<sup>27</sup> His appraisal relied upon the same soil classification maps that were used by the County Assessor in assessing the Subject Property. Mr. Tesar testified that he had not observed the natural gas pipeline described by the Taxpayer and had no specific knowledge of its depth beneath the Subject Property. He also testified that, in his opinion, the power lines on the Subject Property might or might not affect the property's market value.

Mr. Johnson has been an employee of the County Assessor's office for twenty-six years. As of January 1, 2016, he was the appraiser for agricultural land in the office, and he was directly involved in the assessment of the Subject Property for tax year 2016. He testified that he and others from the County Assessor's office physically inspect properties during the assessment process. He explained that value for agricultural land and horticultural land in Lancaster County is determined based on what are known as uninfluenced sales from other counties.<sup>28</sup> He further testified that the County Assessor determines which soil types are contained in a parcel through use of a soil survey, but he did not recall the precise year that the survey was undertaken or its source.

Mr. Sealock has been an employee of the County Assessor's office for eighteen years. He was the appraiser for agricultural land beginning in 2017, having taken over that role from Mr. Johnson. He testified that he had never physically inspected the Subject Property, and that he followed the same approximate methodology as Mr. Johnson in performing assessments.

Mr. Agena was the County Assessor at all material times. His testimony established that he was not directly involved in the assessment of the Subject Property and had no specific knowledge about its characteristics.

Mr. Kubert was employed by Kubert Appraisal Group at the time of the hearing, having recently left employment with Great Plains Appraisal, where he had worked since 1994.<sup>29</sup> He is

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<sup>27</sup> As stated above, the *taxable* value of agricultural land in Nebraska is 75% of its *actual* value.

<sup>28</sup> See Neb. Rev. Stat. §§ 77-1344 through 77-1347.01 (Reissue 2018). Such sales are deemed to have no non-agricultural influences affecting their value at the time of sale.

<sup>29</sup> The Taxpayer asserted that Mr. Kubert had a conflict of interest due to, among other things, the relationship between Great Plains and the County Board. In the course of the hearing, the Commission ruled that the appraisal reports and the testimony of

a Certified General Appraiser in Nebraska, and also holds the State Assessor's Certificate and other credentials. While employed by Great Plains, which had a contract with the County Board to provide analysis and testimony in Commission hearings when necessary, he produced an IAAO-compliant appraisal report for each parcel of the Subject Property.<sup>30</sup> Mr. Kubert concluded that Parcel One had an actual value of \$407,100 for tax year 2016 and an actual value of \$380,500 for tax year 2017; he concluded that Parcel Two had an actual value of \$422,700 for tax year 2016 and an actual value of \$395,000 for tax year 2017.<sup>31</sup>

Mr. Kubert testified that he visited the property in the course of performing his appraisal and used the same soil survey maps as the County Assessor and Mr. Tesar in evaluating it. Mr. Kubert used different comparable sales than did Mr. Tesar for his appraisal, limiting his comparable sales to parcels over sixty acres, with similar land use, soil types, and location. He made adjustments to account for any differences between these comparable sales and the Subject Property during the analysis process.

As discussed above, the Taxpayer has a dual evidentiary burden in this proceeding. First, the Taxpayer must present competent evidence that the decision of the County Board was incorrect.<sup>32</sup> When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to rebut the presumption in favor of the County Board's determination.<sup>33</sup> In this case, each party submitted the reports of appraisals performed according to the applicable standards, for each parcel and tax year at issue, and each appraisal reached a different conclusion of value than the County Board. Therefore, we find that the Taxpayer has presented evidence that the decision appealed from is incorrect, and the presumption in favor of the County Board has been rebutted.

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Mr. Kubert were admissible and any evidence of improper bias would go to the weight given to the reports and testimony. Upon review of the entire record, we find no support for the assertion that improper bias affected Mr. Kubert's reports, opinions, or testimony.

<sup>30</sup> These reports can be found at Exs. 37 and 39, with supporting documents at Exs. 38 and 40.

<sup>31</sup> Prior to the hearing, the County Board filed a Notice of Intent to Seek and Prove a Higher Taxable Value, and now urges the Commission to find a value consistent with Mr. Kubert's opinion of value rather than the decision of the County Board.

<sup>32</sup> Neb. Rev. Stat. §77-5016 (Reissue 2018), *Brenner*.

<sup>33</sup> *JQH La Vista Conf. Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

Once the presumption in favor of the County Board's determination is rebutted, the burden remains on the taxpayer to adduce evidence establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>34</sup>

A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.<sup>35</sup> The testimony of Mr. Johnson and Mr. Sealock established that the methodology employed in determining the value set by the County Board was based on measurable data gathered from verifiable sources and was consistent with professionally accepted mass appraisal methods. This methodology constitutes a basis which could lead a reasonable person to conclude that the County Board's value is correct. Accordingly, we find that the County Board's determination was not arbitrary.

A decision is "unreasonable" only if the evidence presented leaves no room for differences of opinion among reasonable minds.<sup>36</sup> It is well established under Nebraska law that the appraisal of real estate is not an exact science,<sup>37</sup> a fact which was also acknowledged by both appraisers in their testimony. Rather, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.<sup>38</sup> The burden of a taxpayer in an appeal to the Commission is not met by showing a mere difference of opinion.<sup>39</sup> Each party presented appraisal reports and supporting testimony from a licensed appraiser who performed appraisals in accordance with relevant professional standards. For both parcels, in both tax years, Mr. Tesar's opinion of value was lower than the value set by the County Board, and Mr. Kubat's opinion of value was higher. Accordingly, we conclude that the evidence presented leaves room for differences of opinion among reasonable minds, and the value set by the County Board falls within the range of reasonable opinions. The County Board's decision is thus reasonable.

Finally, we find that there is no competent evidence to support the Taxpayer's contention that the Subject Property is not equalized with similar property in the same market area. If taxable values are to be equalized, it is necessary for a taxpayer to establish by clear and convincing

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<sup>34</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018), *Brenner*.

<sup>35</sup> 442 Neb. Admin. Code Ch. 6 § 001.04, *Phelps Cty. Bd. of Equal. v Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

<sup>36</sup> 442 Neb. Admin. Code Ch. 6 § 001.59, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 603 N.W.2d 447 (1999).

<sup>37</sup> *Matter of Bock's Estate*, 198 Neb. 121, 251 N.W.2d 872 (1977).

<sup>38</sup> *Firethorn Inv. V. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 622 N.W.2d 605 (2001).

<sup>39</sup> *JQH La Vista*.

evidence that the valuation placed on the property, when compared with valuations placed on other similar properties, is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.<sup>40</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>41</sup> Having concluded that the value placed upon the Subject Property by the County Board is reasonable based upon evidence that includes a wide range of sales of similar property both within and outside Lancaster County, we cannot logically conclude that the valuation is “grossly excessive.”

As noted above, the County Board filed a Notice of Intent to Seek and Prove a Higher Taxable Value and now urges the Commission to find a value consistent with Mr. Kubert’s opinion of value rather than the decisions of the County Board. Because the record does not demonstrate that the County Board’s decisions were arbitrary or unreasonable, an increase in the taxable value of the Subject Property is not appropriate.

## V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. However, the Commission finds that there is not clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied and the decisions of the County Board should be affirmed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2016 and 2017 are affirmed.<sup>42</sup>

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<sup>40</sup> *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>41</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>42</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

2. The assessed values of the Subject Property are:

**16A 0217:** \$288,100

**16A 0218:** \$300,400

**17A 0202:** \$284,900

**17A 0203:** \$296,100

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018)

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 years 2016 and 2017.

7. This Decision and Order is effective for purposes of appeal on June 14, 2019.<sup>43</sup>

Signed and Sealed: June 14, 2019

SEAL

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

<sup>43</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.