

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Darin J. Placke,
Appellant,

v.

Hall County Board of Equalization,
Appellee.

Case Nos: 16A 118, 16A 0119

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

Background

1. The Subject Property consists of two distinct agricultural parcels located in Hall County, Nebraska. The parcel in Case No. 16A 118 is 200.08 acres. The parcel in Case No. 16A 119 is 27.53 acres. The legal descriptions of the parcels are in the respective Case Files.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property in 16A 118 at \$963,360 for tax year 2016.
3. The Taxpayer protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$655,785 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$963,360 for tax year 2016.
5. The County Assessor assessed the Subject Property in 16A 119 at \$673,034 for tax year 2016.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$603,743 for tax year 2016.
7. The County Board determined that the taxable value of the Subject Property was \$673,034 for tax year 2016.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on June 23, 2017, at the Holiday Inn Express, 508 2nd Avenue South, Kearney, Nebraska, before Commissioner Robert W. Hotz.
10. Darin J. Placke was present at the hearing.
11. Jack Zitterkopf, Hall County Attorney, and Jan Pelland, Hall County Assessor were present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

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

13. The Commission's review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. Darin Placke asserted that the Subject Property was overassessed because of the size of the percentage increases since tax year 2003. He asserted that the assessment increases were 440% and 530% respectively.
20. Mr. Placke provided information about the 2003 sales of several Hall County and Howard County agricultural parcels and compared the assessment percentage increases of the properties with the assessment percentage increases of the Subject Property.
21. He also asserted that certain northern portions of Hall County should be assessed as a separate market area.

² See, Neb. Rev. Stat. §77-5016(8) (2016 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) (2016 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) (2016 Cum. Supp.).

22. “Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, . . .; (2) the income approach; and (3) the cost approach.”⁹
23. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰
24. For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹¹ The Subject Property was assessed using a sales comparison approach, which assessed each acre of the parcel based upon sales prices of similar land sold in Hall County.
25. The Commission finds that there is not clear and convincing evidence that the determinations of actual value by the County Board were arbitrary or unreasonable.
26. 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.
27. 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 2016, for both Case No. 16A 118 and Case No. 16A 119 are Affirmed.
2. The taxable value of the Subject Property in Case No. 16A 118 for tax year 2016 is \$963,360.
3. The taxable value of the Subject Property in Case No. 16A 119 for tax year 2016 is \$673,034.
4. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁰ See, *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).

8. This Decision and Order is effective on August 11, 2017.

Signed and Sealed: August 11, 2017

Robert W. Hotz, Commissioner