

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

Larry E. Boswell,  
Appellant,

v.

Dixon County Board of Equalization,  
Appellee.

Case Nos: 16A 0174 & 16A 0175

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property consists of two agricultural (or, “Ag”) properties, with a legal description of: Tax Lot 5 32-29-5 72.25 acres and NW1/4 NE1/4 5-28-5 35.92 acres.
2. The Dixon County Assessor (the County Assessor) assessed the Subject Properties at \$214,365 for 16A 0174 and \$121,755 for 16A 0175 for tax year 2016.
3. Larry E. Boswell (the Taxpayer) protested this value to the Dixon County Board of Equalization (the County Board) and requested an assessed value of \$132,651 for 16A 0174 and \$65,950 for 16A 0175 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Properties was \$214,365 for 16A 0174 and \$121,755 for 16A 0175 for tax year 2016.
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 June 29, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. The 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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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).

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 feels that his purchase price of \$247,350 for both parcels on November 16, 2015 should result in a lower assessment. The County Assessor stated that this sale was considered a “good sale” and is being used in the county sales file.
17. The Taxpayer feels that issues with access to the property, smaller field sizes and the inability to access with larger farm equipment should result in a lower assessment. Although the Taxpayer owns land adjacent to these parcels, he stated that he has difficulties maneuvering his farm equipment through narrow field access roads and low hanging trees and vegetation. The Taxpayer did not offer any sales of comparable land or quantify how the access adversely affected the value of the Subject Properties. The Taxpayer did not offer any property record cards showing that the Subject Properties were being valued differently than other similar properties.
18. The County Assessor offered evidence of sales of Ag land similar to the Subject Properties. Although these sales did have some rolling hills and draws, they did not have a creek bottom running through them as do the Subject Properties. The County Assessor stated the creek bottom running through the Subject Properties is being valued as waste acres.

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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) (2016 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) (2016 Cum. Supp.).

19. The County Assessor stated that she used the three-year sales study period of Ag land to value her Ag land in Dixon County, and that this method is the generally accepted method of valuing Agricultural Land in mass appraisal.
20. Under Nebraska law, the statutory measure of actual value is not what an individual buyer may be willing to pay for the property, but, rather, its market value in the ordinary course of trade.<sup>9</sup> The value reflected by the generally accepted methodology for valuing Agricultural Land is the best measure of the Subject Property's market value in the ordinary course of trade.
21. 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.
22. 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, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:
 

16A 0174	Total	\$214,365
<u>16A 0175</u>	<u>Total</u>	<u>\$121,755</u>
3. This Decision and Order, if no further action is taken, shall be certified to the Dixon County Treasurer and the Dixon County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective on July 9, 2018.

Signed and Sealed: July 9, 2018

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James D. Kuhn, Commissioner

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<sup>9</sup> *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.* 8 Neb. App. 582, 597 N.W.2d 623 (1999).