

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

Glade A. Smith,  
Appellant,

v.

Dawson County Board of Equalization,  
Appellee.

Case Nos: 18A 0041, 18A 0042, 18A 0043  
& 18A 0044

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Properties are four contiguous parcels comprising 1,761+/- acres of Grassland, with legal descriptions of: SE1/4 NE1/4 & S1/2 SE1/4 & NE1/4 SE1/4 & E15A NW1/4 SE1/4 (174.9) 21-12-23 AC: 174.77 (Case No. 18A 0041), All of Sec (640.64) 22-12-23 AC: 640.20 (18A 0042), W1/2 (317.87) 23-12-23 AC: 317.110 (18A 0043), All of Section (628.50) 27-12-23 AC: 629.370 (18A 0044).
2. For each of the Subject Properties for tax year 2018, the Dawson County Assessor (the Assessor) determined the assessed value; Glade A. Smith (the Taxpayer) requested a lower value; and the Dawson County Board of Equalization (the County Board) determined the taxable value, as shown in the following table:

<b>CASE NO.</b>	<b>ASSESSOR</b>	<b>TAXPAYER</b>	<b>COUNTY BOARD</b>
<b>18A 0041</b>	\$209,627	\$52,500	\$209,627
<b>18A 0042</b>	\$749,290	\$187,322.50	\$749,290
<b>18A 0043</b>	\$374,535	\$93,633.75	\$374,535
<b>18A 0044</b>	\$753,532	\$188,383	\$753,532
<b>TOTAL</b>	\$2,086,984	\$521,839.25	\$2,086,984

3. The Taxpayer appealed each of these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
4. A Single Commissioner hearing was held on July 31, 2019 at the Law Enforcement Center, 111 Public Safety Drive, Community Building Room, 2nd Floor, Grand Island, Nebraska, before Commissioner James D. Kuhn.
5. Glade A. Smith was present at the hearing.
6. No one appeared at the hearing on behalf of the County Board.

Applicable Law

7. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>

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

8. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
9. 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>
10. 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>
11. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
12. 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>
13. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

14. The Taxpayer stated a large portion of the income they can produce on the Subject Property will be paid in property taxes. The Taxpayer asserted they have been forced to reduce the rental rates they can charge for the grassland pastures due to economic issues that are straining potential renters; they feel the amount of taxes being charged are a large part of the issue.
15. The Subject Property was offered for sale by Agri Affiliates resulting in only one offer for \$1,200 per acre for only 320 acres. The Taxpayer asserted that the Subject Property's total size of 1,761 acres limits the number of buyers for that size of property. Due to the fact that the electric utilities that power the electric pumps for the water tanks located in

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<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. 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. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

each of the seven pastures are located in the SE corner of one pasture, the Taxpayer asserted that it is necessary to sell the Subject Property as a whole and not in smaller parts.

16. Two sale bills were provided by the Taxpayer showing an auction of 2,067.98 acres in two tracts located in Dawson County and 1,602 acres in three tracts located in Custer County. The sale prices were \$1,450 per acre and \$1,425 per acre according to the Taxpayer. No property record files were provided for either of these properties showing a sale price or soil types for the Commission to quantify the actual comparability of these properties to the Subject Property.
17. No property record files for the Subject Property were given to the Commission, nor were any property record files of comparable properties. The Commission is unable to determine if other comparable properties are being valued differently than the Subject Property. Without evidence of comparable properties being valued differently than the Subject Property, the Commission has no choice but to affirm the Assessor's value.
18. To the point of the Taxpayer's assertion they are paying a 39.76% tax rate, the taxes levied on agricultural properties are not based on the income produced by the property. The *taxable value* is based on the median price per acre of similar agricultural land sold within Dawson County. The *tax rates* are set by the county's residents, either directly or through the elected officials in county government, and this Commission does not have authority to change them.
19. The Taxpayer also provided 2018 real estate tax receipts for a property they purchased in Missouri to demonstrate the difference in tax amounts compared to Nebraska. The Commission did not give any weight to this evidence.
20. 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.
21. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018, are affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Case No.	
<b>18A 0041</b>	\$209,627
<b>18A 0042</b>	\$749,290

<b>18A 0043</b>	\$374,535
<b>18A 0044</b>	\$753,532
<b>TOTAL</b>	\$2,086,984

3. This Decision and Order, if no further action is taken, shall be certified to the Dawson County Treasurer and the Dawson 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 year 2018.
7. This Decision and Order is effective on August 5, 2019.

Signed and Sealed: August 5, 2019

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James D Kuhn, Commissioner