

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Everett K. Boren,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case No: 15A 0086, 15A 0087, 15A 0088

Decision and Order Reversing Cass
County Board of Equalization

Background

1. The Subject Properties are unimproved agricultural land, with legal descriptions of: 15A 0086: Lot 1 Exc TL 34 & 30 & pt TL 36 N ½ NW ¼ 21-11-14, 35.19 acres, 15A 0087: L5 SE ¼ NW ¼, 21-11-14 26.67 acres and 15A 0088: Lt 21 Exc Pt TL36 SE ¼ NW ¼, 21-11-14 3.24 acres all in Cass County, Nebraska.
2. The Cass County Assessor (the County Assessor) assessed the Subject Properties at \$118,157 in 15A 0086, \$84,960 in 15A 0087 and \$12,568 in 15A 0088 for tax year 2015.
3. The Taxpayer protested this value to the Cass County Board of Equalization (the County Board) and requested an assessed value of \$3,519 in 15A 0086, \$2,667 in 15A 0087 and \$324 in 15A 0088 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$115,012 in 15A 0086, \$79,081 in 15A 0087, and \$11,012 in 15A 0088 for tax year 2015.
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 March 10, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
7. Everett K. Boren was present at the hearing for (Taxpayer).
8. Lori Huebner, Cass 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²

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

² 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.”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
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the Subject Property is land locked. He purchased the property in December 2012 and was able to access the property to the North through a neighbor’s property. After his purchase, the parcel to the North that he had previously been used for access, was sold.
17. The Taxpayer stated that the new owner of the parcel to the North did allow the Taxpayer’s tenant to access the Subject Property to plant and harvest his crops. He was unaware if he will have access for 2016. The Taxpayer stated that he cash rents the farmable acres and the tenant works with the owner to the North to gain access to the property for farming.
18. The Taxpayer informed the Commission that he was in litigation with the neighbor to obtain a permanent easement to have access to the Subject Property. He stated that the neighbor had offered him an easement for \$5,000, but he turned it down because of all the stipulations of the easement. The Taxpayer did not provide the Commission with a copy of the easement or any copies of the pending law suit.
19. The County Assessor agreed that there was a problem with accessing the Subject Property. She provided photos of the Subject Property that have a grain truck and camper on the

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(8) (2014 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) (2014 Cum. Supp.).

property. She stated that she is unaware of any other parcels in Cass County with limited access and is unable to quantify the effects it would have on the market value of the property.

20. The Commission notes that the tenant did have access to the parcel to plant and harvest the crops. The outcome of the pending litigation is unknown. The Commission would find that by paying \$5,000 for an easement, the Taxpayer would have access and adjusts the value of the Subject Property by \$5,000 for tax year 2015. The Commission finds the total assessed value of the three parcels that make up the Subject Property for 2015 is \$200,105 (\$205,105-\$5,000).
21. 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.
22. 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Vacated and Reversed.
2. The total taxable value of the three parcels that make up the Subject Property for tax year 2015 is: \$200,105.
3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 2015.
7. This Decision and Order is effective on March 14, 2016.

Signed and Sealed: March 14, 2016

Nancy J. Salmon, Commissioner