

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Norman Parde, Jr,
Appellant,

v.

Gage County Board of Equalization,
Appellee.

Case No: 15A 0082

Decision and Order Affirming Gage
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel with several outbuildings, with a legal description of: SW ¼ 14-4-8, 160 Ac, Gage County, Nebraska.
2. The Gage County Assessor (the County Assessor) assessed the Subject Property at \$722,815 for tax year 2015.
3. The Taxpayer protested this value to the Gage County Board of Equalization (the County Board) and requested an assessed value of \$567,350 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$722,815 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 15, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
7. Robert M. Schafer, legal counsel, was present at the hearing for the taxpayer (Taxpayer).
8. Patricia Milligan, Gage 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
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

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).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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 was overvalued. The parcel is irrigated by a pivot that draws out of a pond and has a limited supply of water. He asserts the neighboring parcel gets a 15% break and asserts the Subject Parcel should receive the same discount. The Taxpayer also asserted that the land with a limited water supply should not be assessed at the same valuation as a parcel with an unlimited water supply. The Taxpayer also asserted that his yield was less on this parcel with a limited water supply compared to a parcel with unlimited water.
17. The Assessor explained that when the water supply comes from across the road or from a water source on a different parcel, they are given a 15% discount on the agricultural value. She stated that the Taxpayer owns the water source on the Subject Property and is not entitled to the 15% discount. It is her belief that there should be no discounts given to any parcels in the county no matter what the water source is. She explained that there are two market areas in the county. The Subject Property is in market area one. She noted that she used 75 sales to value the irrigated land in market area 1. She stated that she did not find that a difference in the availability of water (ie on the parcel or from a source on a different parcel) to effect the market value using mass appraisal.
18. As to the Taxpayer’s assertion that since there was a limited amount of water available to irrigate the Subject Property in 2015, the irrigated acres should be assessed at a value less

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.).

than irrigated acres without a limited amount of water available, the Commission notes that there was no evidence of sales of acres with similar water availability limitations to support this assertion.

19. The Commission also finds that there is insufficient evidence to determine the difference, if any, in the actual value of agricultural land and horticultural land irrigated from a limited water source as compared to agricultural land and horticultural land irrigated from an unlimited water source. While it is possible that the different source of water results in different valuations, that difference would need to be established by market evidence. No such market evidence was provided to the Commission. We therefore find there is no clear and convincing evidence that the valuation per acre of the irrigated acres on the Subject Property should not be the same as other irrigated acres in Gage County.
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 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 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$660,615
<u>Improvements</u>	<u>\$ 62,200</u>
Total	\$722,815

3. This Decision and Order, if no further action is taken, shall be certified to the Gage County Treasurer and the Gage 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 22, 2016.

Signed and Sealed: March 22, 2016

Nancy J. Salmon, Commissioner

