

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

Thomas D. Goeglein,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case Nos: 14A 162, 14A 163, 15A 0052 &  
15A 0053

Decision and Order Reversing the Decisions  
of the Otoe County Board of Equalization

Background

1. In Case Nos. 14A 162 and 15A 052, the Subject Property is a 87.26 acre agricultural parcel. The legal description of the parcel and property record card for tax years 2014 and 2015 are found in the Case File.
2. In Case Nos. 14A 163 and 15A 053, the Subject Property is a 130.25 acre agricultural parcel. The legal description of the parcel and property record card for tax years 2014 and 2015 are found in the Case File.
3. In Case Nos. 14A 162 and Case No. 15A 052, the Otoe County Assessor (the County Assessor) assessed the Subject Property at \$223,470 for tax year 2014 and \$289,090 for tax year 2015.
4. In Case Nos. 14A 163 and Case No. 15A 053, the County Assessor assessed the Subject Property at \$391,520 for tax year 2014 and \$465,510 for tax year 2015.
5. The Taxpayer protested these assessed values to the Otoe County Board of Equalization (the County Board).
6. The County Board determined that the taxable value of the Subject Property in Case Nos. 14A 162 and 15A 052 was \$223,470 for tax year 2014 and \$289,090 for tax year 2015.
7. The County Board determined that the taxable value of the Subject Property in Case Nos. 14A 163 and 15A 053 was \$391,520 for tax year 2014 and \$465,510 for tax year 2015.
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 December 23, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
10. Thomas D. Goeglein (the Taxpayer) was present at the hearing.
11. John Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christy Smallfoot, Deputy Otoe 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.<sup>1</sup>
13. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<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>
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.<sup>5</sup>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact

19. The parcels were assessed using a sales comparison approach, utilizing sales of agricultural parcels in the same market area as each parcel of the Subject Property.
20. Using the sales comparison approach, the agricultural land was classified by use and soil types and assessed per acre.

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

<sup>2</sup> 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).

<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) (2014 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) (2014 Cum. Supp.).

21. The 87.26 acre parcel was located in agricultural market area 7000 and the 130.25 acre parcel was located in agricultural market area 8000.
22. At the hearing, Thomas Goeglin indicated that some of the land that had been assessed as being in grass and trees was actually active creek beds. The County Assessor agreed that this land of each parcel would appropriately be classified as waste acres.
23. The County Assessor and the Taxpayer agreed that there existed 4.34 acres of waste land on the parcel of 87.26 acres and 6.0 acres of waste land on the parcel of 130.25 acres.
24. Wasteland includes land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes.<sup>9</sup>
25. The County Assessor stated that all waste acres in Otoe County, including both market areas, for both tax years 2014 and 2015, were assessed at \$100 per acre.
26. The County Assessor and Taxpayer agreed that 4.34 acres of the 87.26 acre parcel and 6.0 acres of the 130.25 acre parcel originally classified as grass and tree acres should instead be classified as waste land acres.
27. The Commission agrees, and finds that 4.34 acres of the 87.26 acre parcel and 6.0 acres of the 130.25 acre parcel should be classified and assessed as waste acres.
28. The Taxpayer also asserted that increases in the assessments for both parcels for both tax years exceeded the assessments of other properties in each respective market area of Otoe County.
29. There were no exhibits provided that indicated the soil types of other properties in like market areas were assessed at less per acre than were the comparable acres of the Subject Properties.
30. The Commission has considered all statements made and exhibits provided by the parties in making its decisions.

#### Conclusions of Law

31. 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.
32. 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 and reversed.

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<sup>9</sup> Title 350 NAC, Chapter 14, §002.54 (Rev. 3/15/09).

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Properties in these appeals for tax years 2014 and 2015 are Vacated and Reversed.<sup>10</sup>
2. The taxable value of the Subject Property in Case No. 14A 162 is \$219, 351.<sup>11</sup>
3. The taxable value of the Subject Property in Case No. 15A 052 is \$284,314.<sup>12</sup>
4. The taxable value of the Subject Property in Case No. 14A 163 is \$385,170.<sup>13</sup>
5. The taxable value of the Subject Property in Case No. 15A 053 is \$459,580.<sup>14</sup>
6. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each Party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax years 2014 and 2015.
10. This Decision and Order is effective on January 5, 2017.

Signed and Sealed: January 5, 2017

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Robert W. Hotz, Commissioner

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<sup>10</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

<sup>11</sup> 4.34 GRT1 acres were reclassified as waste acres at \$100 per acre. See Property Record Card, Agland Inventory Report.

<sup>12</sup> 4.34 GRT1 acres were reclassified as waste acres at \$100 per acre. See Property Record Card, Agland Inventory Report.

<sup>13</sup> 6 GRT1 acres were reclassified as waste acres at \$100 per acre, including .57 acres of 1GT1, 1.69 acres of 2GT1, 1.11 acres of 4G1T1 and 2.63 acres of 2G1T1., See Property Record Card, Agland Inventory Report.

<sup>14</sup> 6 GRT1 acres were reclassified as waste acres at \$100 per acre, including 1.79 acres of 4G1T1, 2.63 acres of 2G1T1, and 1.58 acres of 4G1T1. See Property Record Card, Agland Inventory Report.