

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

Arthur E. Moeller,  
Appellant,

v.

Merrick County Board of Equalization,  
Appellee.

Case No: 14A 025

Decision and Order Affirming Merrick  
County Board of Equalization

1. A Single Commissioner hearing was held on February 20, 2015, at Hamilton County Court House, 1111 13th Street Lower Level, Aurora, NE 68818, before Commissioner Salmon.
2. Arthur E. Moeller (the Taxpayer) was present at the hearing.
3. Lynelle Homolka, Merrick County Attorney, was present for the Merrick County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an agricultural parcel improved with a dwelling and detached garage, with a legal description of: N ½ SE ¼ Less ROW 30-12-8 Containing 76.42 acres, Merrick County, Nebraska.

Background

5. The Merrick County Assessor (the Assessor) assessed the Subject Property at \$350,700 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$308,528 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$350,700 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>1</sup> “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.”<sup>2</sup>

<sup>1</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).

<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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>
11. 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>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
13. 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>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
15. The Taxpayer asserted that the Subject Property was overvalued. He asserted that other parcels he owned received higher yields, but were assessed at lower per acre values. He provided the Commission with documents showing yields from the Subject Property. He asserted that the Subject Property only has 18” of topsoil and is otherwise pure sand.
16. The Taxpayer expressed an opinion of the assessed value for the agricultural portion of the Subject Property of \$3,500 per acre at 75% of actual value or an opinion of actual value at \$4,667.  $(\$3,500 \times 100)/75 = \$4,667$  rounded).
17. The County Assessor provided the Commission with several sales of agricultural land within the Subject Property’s market area. The sales contained the same or similar soil types as are located on the Subject Property. These sales indicated an actual value higher than the Taxpayer’s opinion of value and confirmed the assessed value.
18. 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.
19. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

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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(8) (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.).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Merrick County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$300,965
<u>Improvements</u>	<u>\$ 49,735</u>
Total	\$350,700

3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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 2014.
7. This Decision and Order is effective on March 4, 2015.

Signed and Sealed: March 4, 2015

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Nancy J. Salmon, Commissioner