

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

Darrell D. Bruns,  
Appellant,

v.

Jefferson County Board of Equalization,  
Appellee.

Case Nos: 16A 0156 & 17A 0016

Decision and Order Affirming the Decisions  
of the Jefferson County Board of  
Equalization

**For the Appellant:**

Darrell D. Bruns,  
Pro Se

**For the Appellee:**

No Appearance

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 161.74 acre parcel located in Jefferson County. The legal description and property record card for the Subject Property are found at Exhibit 3.

**II. PROCEDURAL HISTORY**

The Jefferson County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$230,465 for tax year 2016 and \$246,310 for tax year 2017.<sup>1</sup> Darrell D. Bruns (the Taxpayer) protested these assessments to the Jefferson County Board of Equalization (the County Board) and requested assessed valuations of \$113,218 for tax year 2016 and \$98,238 for tax year 2017.<sup>2</sup> The Jefferson County Board of Equalization (the County Board) determined that the taxable value of the Subject Property was \$230,465 for tax year 2016 and \$246,310 for tax year 2017.<sup>3</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). On August 18, 2017, Commissioner Steven A. Keetle

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<sup>1</sup> Exhibit 1 (2016), Exhibit 2 (2017).

<sup>2</sup> Id.

<sup>3</sup> Id.

conducted a single commissioner hearing, and on November 8, 2017, the Commission issued an order determining the taxable value of the Subject Property to be \$162,000.<sup>4</sup> On December 6, 2017, both parties filed requests for rehearing before a panel of the Commission. The Commission vacated its previous order and held a rehearing on May 17, 2018, with Commissioner Hotz presiding. The Taxpayer and the County Assessor were present at the hearing, but the County Board did not appear in person or through legal counsel. In the course of the hearing, Exhibits 1 through 10 were admitted without objection.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>5</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>6</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>7</sup>

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>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</sup>

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<sup>4</sup> This decision was based upon an appraisal report of which only a portion was offered in the present proceeding.

<sup>5</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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>6</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>7</sup> *Id.*

<sup>8</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>9</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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>10</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>11</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>12</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>13</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>14</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>15</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>16</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>17</sup> Taxable value is the percentage of actual value

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<sup>10</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. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>11</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>12</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>16</sup> *Id.*

<sup>17</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>18</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>19</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>20</sup> Agricultural and horticultural land shall be valued for purposes of taxation at seventy-five percent of its actual value.<sup>21</sup>

## **B. Facts & Analysis**

The Taxpayer testified that 132.56 acres of the Subject Property are subject to an easement under the Wetlands Reserve Program (WRP). The easement was granted in consideration of a one-time payment of \$294,053, and recorded on March 19, 2010. The remaining 29.18 acres of the Subject Property are classified as waste,<sup>22</sup> and were valued at \$225 per acre by the County Assessor for tax year 2017. The record contains no other quantifiable evidence regarding the value of this land, and therefore, no basis to reverse the determinations of the County Board as to its valuation. Land encumbered by an easement under the WRP cannot be used for agricultural or horticultural purposes and therefore cannot be characterized as agricultural land or horticultural land and must be valued at actual value.<sup>23</sup> The Taxpayer does not dispute that the WRP acres are encumbered and should be valued at actual value. Rather, the Taxpayer disputes the methodology used by the County Assessor in determining the actual value of the acres.

Mary Banahan, the County Assessor, testified at the hearing. Ms. Banahan holds the State Assessor's Certificate, and has served as County Assessor since January 2015. Ms. Banahan testified that there were no sales of WRP land in Jefferson County or within 12 miles of the county during the three-year period commonly employed by assessors to determine property values of agricultural land and horticultural land.<sup>24</sup> To determine the actual value of the WRP acres on the Subject Property, the County Assessor identified which land capability group and land valuation group (LCG/LVG) the acres would fall into if they were agricultural land.<sup>25</sup> The indicated value for each LCG/LVG is expressed by the County Assessor's computer system as

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<sup>18</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>19</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>21</sup> *Id.*

<sup>22</sup> Ex. 3. The record contains minor discrepancies regarding the precise breakdown of the land by use.

<sup>23</sup> 442 Nebraska Administrative Code, Ch. 14 § 002.06B.

<sup>24</sup> 350 Nebraska Administrative Code, Ch. 17 § 003.05C.

<sup>25</sup> Testimony of Bruns, Banahan. See also Exhibit 3. An LCG is defined at 350 Nebraska Administrative Code, Ch. 14 § 004.08E.

75% of actual value, so the indicated values were multiplied by 135% to result in the actual value of the WRP acres.<sup>26</sup>

Ms. Banahan testified that she had reassessed the Subject Property for 2018 (a tax year not on appeal here) using new information obtained from the Department of Revenue, applying the value of \$1,050 per acre to all of the WRP acres. She also testified that, of the neighboring counties, Thayer County assessed WRP acres at about \$1,400 per acre, and Saline County assessed WRP acres at over \$2,000 per acre.

The Taxpayer asserts that the County Assessor's methodology is flawed because it results in non-agricultural land being assessed at the market value of agricultural land. We agree. As Commissioner Keetle indicated in his now-vacated order, "The valuation methods used by the Assessor for WRP are not supported by the law or the rules and regulations of the State of Nebraska. Specifically, WRP land is not considered agricultural or horticultural land and must be valued at its actual value."<sup>27</sup> And as the Commission stated in a previous order regarding the Subject Property,

The Commission finds that the determination of value for land on the Subject Property was arbitrary. The evidence demonstrates that the Assessor determined the assessed values of land subject to a WRP easement as well as recreational land based on their market value as agricultural land and horticultural land when they are not agricultural land and horticultural land under Nebraska law.<sup>28</sup>

The Taxpayer has presented competent evidence that the decision of the County Board was incorrect, because the decision relied upon methodology the Commission has consistently found to be inconsistent with the requirements of Nebraska law. As a result, the presumption in favor of the County Board has been rebutted. As discussed above, however, even with the presumption rebutted, the burden of proof remains on the Taxpayer to show by clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable.<sup>29</sup> The "clear and convincing" evidence required to reverse a decision of the County Board is a higher evidentiary standard than the "competent" evidence required to rebut the presumption. Thus, a taxpayer may

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<sup>26</sup> Id.

<sup>27</sup> Case File.

<sup>28</sup> *Darrell D. Bruns v. Jefferson Cty. Bd. of Equal.*, Commission Case Nos. 14A 0149 & 15A 0028, March 16, 2017, at 7. We note that this decision was issued after the assessment dates for the tax years at issue in the present appeals.

<sup>29</sup> *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

be able to rebut the initial presumption without reaching the level of proof required to obtain relief.

The Taxpayer offered information on the per acre assessed values of grassland and WRP acres for parcels in eight other Nebraska counties.<sup>30</sup> According to the Taxpayer's testimony, he obtained this information by locating WRP parcels from the counties' online GIS mapping and taking note of the per acre value of the WRP land. The ratio of WRP value to grassland value, as shown on Exhibit 6, varies by county, but ranges from 21% to 44%. The general thrust of this information is that, in the counties surveyed, WRP acres were assessed at a significantly lower per acre rate than grassland, whereas some of the WRP acres of the Subject Property were assessed at the market value of grassland of the same LCG/LVG in Jefferson County.

This evidence is not persuasive as to the specific valuation of the Subject Property. The information is not supported by property record files, so the Commission is unable to evaluate the characteristics of the land to determine whether it is truly comparable to the Subject Property.<sup>31</sup> Additionally, the parcels surveyed vary in distance from Jefferson County, including four counties in the southeast corner of Nebraska and ranging from Adams County to the west to Knox County to the northeast.

The Taxpayer also offered pages 48 through 122 of an appraisal report on the Subject Property.<sup>32</sup> This exhibit includes information on four sales of WRP acres from Nemaha and Otoe Counties.

Sale #1 was \$87,648 for 158.41 acres in Nemaha County on April 12, 2013.<sup>33</sup> Of these acres, two were road, which has no assessed value, and the rest (156.41 acres) were WRP.<sup>34</sup> Thus, the entire amount of the sales price is attributable to the 156.41 WRP acres, and the average sale price of the WRP acres was \$560 per acre.

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<sup>30</sup> Exhibit 6.

<sup>31</sup> The Commission's Order for Hearing and Notice of Hearing (Case File) states:

**12. Required evidence: Each party shall provide as an exhibit:**

a. Copies of the County's Property Record File for any parcel a party will assert is a comparable parcel.

<sup>32</sup> See Ex. 7. The page numbers indicate that the full appraisal was 142 pages in length. The Taxpayer testified that he offered a partial appraisal based on what had been deemed admissible in a past proceeding of the Commission. Page numbers for Exhibit 7 in this Order reflect the original numbering by the appraiser.

<sup>33</sup> Ex. 7:50-58.

<sup>34</sup> Ex. 7:56.

Sale #2 was \$174,000 for 209.13 acres in Nemaha and Otoe Counties on March 5, 2012.<sup>35</sup> Of these acres, 3.42 were road and .84 acres were dry cropland with a market value of \$3,192; the rest (204.87 acres) were WRP.<sup>36</sup> The remaining value, \$170,808, is attributable to the 204.87 acres of WRP for an estimated sales price of \$834 per acre.

Sale #3 was \$216,000 for 108.09 acres in Nemaha County on October 23, 2015.<sup>37</sup> Of these acres, 3.19 were road and the rest (104.9 acres) were WRP.<sup>38</sup> Because road does not have an assessed value, the amount of the sale price attributable to WRP acres was \$216,000. Thus, the estimated sales price of the WRP acres was \$2,059 per acre.

Sale #4 was \$143,803 for 155.9 acres in Otoe County on December 2, 2015.<sup>39</sup> Of these acres, 25.17 were recreational land and the remaining 130.73 were WRP.<sup>40</sup> The acres classified as recreational land had a market value of \$85,580, so \$58,223 of the sale price is attributable to WRP acres.<sup>41</sup> The estimated sales price of the WRP acres was \$445 per acre.

In a previous decision relating to the Subject Property, the Commission relied upon evidence of these same four sales, concluding that the median value of the WRP acres was \$700 per acre for tax years 2014 and 2015 and then applying that rate to determine the value of the Subject Property.<sup>42</sup> However, as sales become more remote in time from the assessment date, their reliability as indicators of market value decreases.

In compiling the sales file used to confirm statewide equalization of real property values, county assessors make use of sales from a selected time period. For agricultural land and horticultural land, this period “includes qualified unimproved and minimally improved sales of agricultural and horticultural land for a 3-year period between October 1 and September 30. This 3-year period ends the year prior to the assessment year for which values are established.”<sup>43</sup> Although the Commission is not limited to sales from this period in evaluating the market value

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<sup>35</sup> Ex. 7:59-100.

<sup>36</sup> Ex. 7:71. The assessed value of the .84 acres of dryland was \$2,394 (Exhibit 7:76). It is impossible to determine what year the appraiser relied upon to determine his unit value from the information in the record, so we apply the statutory basis of 75% to determine the market value.  $\$2,394 \div 0.75 = \$3,192$ .

<sup>37</sup> Ex. 7:101-110.

<sup>38</sup> Ex. 7:106.

<sup>39</sup> Ex. 7:111-122.

<sup>40</sup> Ex. 7:116.

<sup>41</sup> Id.

<sup>42</sup> See *Bruns v. Jefferson Cty. Bd. of Equal.*, Case Nos. 14A 0149 & 15A 0028.

<sup>43</sup> 350 Nebraska Administrative Code, Ch. 17 § 003.05C.

of property, it provides a useful framework for these appeals. For the 2016 valuation of the Subject Property, the relevant sales period would be October 1, 2012, through September 30, 2015. For the 2017 valuation, the relevant period would be October 1, 2013, through September 30, 2016. Accordingly, Sale #2, from March 2012, would not be deemed relevant to either tax year for sales file purposes. Neither Sale #1 nor Sale #2 would be relevant to tax year 2017. Only Sale #3 and Sale #4 would be relevant to tax year 2017.

Applying this standard, we are left with a single sale for tax year 2016, and two widely disparate sales (\$445 per acre and \$2,059 per acre) for tax year 2017. None of these sales occurred within the same county or market area as the Subject Property. And although the sales were culled from an appraisal report, the full report is not in the record. The full report would presumably include adjustments for factors such as time, distance, and property quality, as well as the professional opinion of value from the appraiser who prepared it; access to such information would provide the Commission with much stronger evidence of the actual value of the Subject Property. Accordingly, although we do not completely disregard the sales offered by the Taxpayer, we find that, given the appropriate evidentiary weight, they do not constitute clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable. The Taxpayer has not produced evidence sufficient to carry the burden of proof and obtain relief.

### **CONCLUSION**

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board are affirmed.



## V. ORDER

IT IS ORDERED THAT:

1. The decisions of the Jefferson County Board of Equalization determining the taxable value of the Subject Property for tax years 2016 and 2017 are affirmed.<sup>44</sup>
2. The taxable value of the Subject Property for tax year 2016 is \$230,465. The taxable value of the Subject Property for tax year 2017 is \$246,310.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Jefferson County Treasurer and the Jefferson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 years 2016 and 2017.
7. This Decision and Order is effective for purposes of appeal on November 9, 2018.<sup>45</sup>

Signed and Sealed: November 9, 2018

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>44</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>45</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.