

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Christina L. Severson,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 16A 0155

Decision and Order Affirming the Decision
of the Buffalo
County Board of Equalization

Background

1. The Subject Property is a 149.41 acre agricultural parcel in Buffalo County, Nebraska. The legal description of the Subject Property is found in the Case File.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$301,155 for tax year 2016.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$256,801 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$301,155 for tax year 2016.
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 June 22, 2017, at the Holiday Inn Express, 508 2nd Avenue South, Kearney, Nebraska, before Commissioner Robert W. Hotz.
7. Christina L. Severson was present at the hearing.
8. Andrew W. Hoffmeister, Chief Deputy Buffalo County Attorney, Ethel Skinner, Buffalo County Assessor, and Nora Borer, Deputy County Assessor were 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) (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).

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 put forth three methods to value the Subject Property as alternatives to the sales comparison approach used by the County Assessor and relied upon by the County Board.
17. The Taxpayer’s first valuation method relied upon a University of Nebraska 2016 Land Value Trend Study. The Trend Study indicated a decrease of 4% in the “weighted average farmland value” of a “Central” region of Nebraska. The Central region included multiple Nebraska counties and the farmland sales prices surveyed included all classes of agricultural land and horticultural land in the identified region. The Taxpayer asserted that this should result in a 4% assessment decrease from tax year 2015 to tax year 2016.
18. The Taxpayer’s second valuation method also relied upon the University of Nebraska 2016 Land Value Trend Study. The Trend Study indicated average reported values of Dryland (“Dryland Cropland”) and Grassland (“Grazing Land”) with values in the “Central” region of Nebraska of \$3,235 and \$1,935 respectively. Again, the Central

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(9) (2016 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) (2016 Cum. Supp.).

region included multiple Nebraska counties. The Taxpayer asserted that applying this method should result in a market value of the Subject Property of \$268,806.

19. The Taxpayer's third valuation method is similar to the second, except that instead of applying values from the Trend Study the Taxpayer applied values from a Land Values 2015 Summary (August 2015) from the United States Department of Agriculture (USDA) National Agricultural Statistics Service. These values were for Dryland ("Non-irrigated") and Grassland ("Pasture") of \$3,970 and \$870 respectively for the entire State of Nebraska. The Taxpayer asserted that applying this method should result in a market value of the Subject Property of \$249,401.
20. None of the Taxpayer's suggested valuation methods were limited to agricultural land and horticultural land in the taxing jurisdiction of Buffalo County.
21. "Actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, . . .; (2) the income approach; and (3) the cost approach."⁹
22. The Subject Property was assessed using a sales comparison approach, which assessed each acre of the parcel based upon sales prices of similar land sold in Buffalo County. The Taxpayer did not produce any evidence showing that the sales comparison approach was incorrectly applied to the Subject Property.
23. The Commission finds that there is not clear and convincing evidence that the determination of actual value by the County Board is arbitrary or unreasonable.
24. 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.
25. 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 2016 is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is \$301,155.
3. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo 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.

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on August 11, 2017.

Signed and Sealed: August 11, 2017

Robert W. Hotz, Commissioner