

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

Burdette A. Piening Trust,  
Burdette A. Piening, Trustee,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 16A 0226, 16A 227, 17A 198,  
17A 199

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

Background

1. The Subject Property in Case Nos. 16A 226 and 17A 199 consists of 77.45 acres of agricultural land and horticultural land in Lancaster County, Nebraska, identified as Lot 12. The legal description is found in the Case Files.
2. In Case No. 16A 226, the Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$135,300 for tax year 2016. The Taxpayer protested this assessed value to the Lancaster County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property was \$135,300 for tax year 2016. In Case No. 17A 199, the Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$134,900 for tax year 2017. The Taxpayer protested this assessed value to the County Board. The County Board determined that the taxable value of the Subject Property was \$134,900 for tax year 2017.
3. The Subject Property in Case Nos. 16A 227 and 17A 198 consists of 82.65 acres of agricultural land and horticultural land in Lancaster County, Nebraska identified as Lot 7. The legal description is found in the Case Files. In Case No. 16A 227, the Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$137,600 for tax year 2016. The Taxpayer protested this assessed value to the Lancaster County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property was \$137,600 for tax year 2016. In Case No. 17A 198, the Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$137,600 for tax year 2017. The Taxpayer protested this assessed value to the County Board. The County Board determined that the taxable value of the Subject Property was \$137,600 for tax year 2017.
4. A consolidated Single Commissioner hearing was held on January 29, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
5. Jarrod Crouse appeared at the hearing on behalf of the Taxpayer. Burdette A. Piening, Trustee, also appeared on behalf of the Taxpayer.

6. Tim Sealock, an employee of the Lancaster County Assessor, was present for the County Board.

#### Applicable Law

7. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
8. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
9. 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>
10. 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>
11. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
12. 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>
13. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

14. All of the acres of Lot 12 and Lot 7 were enrolled in the Grassland Reserve Program (GRP) of the United States Department of Agriculture (USDA) Natural Resources

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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) (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>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) (2016 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) (2016 Cum. Supp.).

- Conservation Service (NRCS). Under an “Option Agreement To Purchase” and an “Option Agreement To Purchase Amendment 1,” the Taxpayer and the USDA agreed that 427.38 acres, including all of Lot 12 and Lot 7, would be encumbered by an easement burdening the land. The purpose of the easement is to protect tall grass prairie.
15. However, under the Agreements, the Taxpayer is permitted to use the land “for normal farming, pasturing, and grazing.” Under a Grassland Reserve Program Conservation Easement between the same parties dated and signed May 18, 2006, the Taxpayer is permitted to “graze, hay, harvest for seed production, mow, construct fire breaks, conduct fire rehabilitation activities, and conduct common grazing practices, including maintenance and necessary cultural practices, consistent with the conservation purposes of [the] Deed.” The term of the easement is perpetual. Under the Agreements and Easement, the USDA agreed to pay the Taxpayer \$940,236.<sup>9</sup>
  16. The Taxpayer asserted that the Agreement and Deed restrictions limited the pool of prospective buyers and thus lowered the market value of Lot 12 and Lot 7.
  17. The Trustee informed the Commission that with respect to the relevant times for tax years 2016 and 2017, the Taxpayer collected rent on some of the ground, including Lot 12 and Lot 7, for cattle grazing.
  18. The Trustee informed the Commission that he had identified only 12 properties in Nebraska with acres in the Grassland Reserve Program. Some of those properties are in Lancaster County. None of the 12 GRP parcels has recently sold.
  19. The County Assessor assessed the acres of both Lot 12 and Lot 7 based upon land capability groups (LCG).<sup>10</sup> Based upon LCG, the acres of Lot 12 and Lot 7 were assessed at between \$1,500 per acre and \$3,000 per acre.
  20. The Commission finds that since the Taxpayer’s permitted uses under the easement allow the Taxpayer to use the land in the same way other grassland is used in Lancaster County, it is reasonable to assess Lot 12 and Lot 7 per LCG in comparison to other grassland in the county.
  21. 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.
  22. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decisions of the County Board should be affirmed.

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<sup>9</sup> Under the agreements, the Taxpayer was paid approximately \$2,200 per affected acre.

<sup>10</sup> Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification. NAC Title 350, Chapter 14, §002.41.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2016 and 2017 are Affirmed.
2. The taxable value of the Subject Property in Case No. 16A 226 is \$135,300.
3. The taxable value of the Subject Property in Case No. 16A 227 is \$137,600.
4. The taxable value of the Subject Property in Case No. 17A 198 is \$137,600.
5. The taxable value of the Subject Property in Case No. 17A 199 is \$134,900.
6. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016 and 2017.
10. This Decision and Order is effective on February 7, 2018.

Signed and Sealed: February 7, 2018

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Robert W. Hotz, Commissioner