

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jackie S. Russell,
Appellant,

v.

Adams County Board of Equalization,
and,
Dan S. and Jamie L. Beal,
Appellee(s).

Case No: 16A 0196

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

For the Appellant:

Dan Pauley,
Attorney at Law
for Jackie S. Russell,
Adams County Assessor

For the Appellees:

David Bergin,
Deputy Adams County Attorney
for the Adams County Board of
Equalization

Dan Beal,
Pro Se

The appeal was heard before Commissioners Steven A. Keetle and Robert W. Hotz.

I. THE SUBJECT PROPERTY

The Subject Property is a 314.17 acre agricultural and horticultural parcel located in Adams County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

Jackie Russell, the Adams County Assessor (the Assessor), determined that the assessed value of the Subject Property was \$1,719,160 for tax year 2016. Dan S. and Jamie L. Beal (the Owner) protested this assessment to the Adams County Board of Equalization (the County Board) and requested an assessed valuation of \$1,613,395. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$1,646,745.¹

The Assessor appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and

¹ Exhibit 1.

submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits.² The Commission held a hearing on June 20, 2017.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ 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.⁹

² Case File.

³ 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.”¹⁰ 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.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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.¹³

“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.”¹⁴ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁵ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

¹⁰ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.¹⁹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²⁰

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.²¹

B. Summary of the Evidence and Analysis

There is a creek bottom that runs across the Subject Property.²² Prior to the protest to the County Board, all of the acres of the Subject Property located in the creek bottom were classified as grassland acres.²³ The County Board determined that the 35.46 acres of the creek bed should be classified as wasteland and reduced the assessed value of the land component of the Subject Property to reflect this change.²⁴

The Assessor alleged that only a portion of the creek bottom land classified as waste by the County Board should be classified and valued as waste. Jim Kuhn, the Chief Appraiser (the Appraiser) for the Assessor, testified that he inspected the Subject Property from the building site and viewed aerial imagery of the Subject Property. Based upon his inspection, the Appraiser testified that some of the 35.46 acres of creek bottom acres should be classified as grassland acres based on soil type, as shown as the areas outlined in red and labeled as waste on Exhibit 4, page 6. The Appraiser further testified that three areas of the 35.46 acres of creek bottom should be classified as waste, as shown as the areas outlined in black and labeled as waste on Exhibit 4, page 6. The Nebraska Administrative Code states that land with less than 35% tree canopy should be classified as grassland.²⁵ The Appraiser’s testimony was that based on the information

¹⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-132 (Reissue 2009).

²¹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²² E4:6

²³ E4:1-2

²⁴ E1, E4:4-6, Both the areas outlined in black and marked as waste and the areas outlined in red and marked as waste on Exhibit 4 page 6 show where the 35.46 acres determined as waste by the County Board.

²⁵ Title 350 Neb. Admin. Code, ch 14, §006.04A (3/09).

he reviewed that the red outlined acres had less than 35% tree cover and should be valued as grass while the black outlined areas had 35% or more tree cover and should be valued as waste.

Dan Beal, the owner of the Subject Property (the Owner), testified regarding his personal knowledge and inspection of the Subject Property. The Owner stated that he has walked the entire creek bottom located on the Subject Property. The Owner testified that the creek bottom was three to seven feet wide and three to five feet deep, had very limited access, and contained deciduous trees, wild plum, and sumac, which made this portion of the Subject Property not viable for haying or grazing. The Owner testified that the areas identified as waste by the Appraiser did have greater tree cover than the rest of the creek bottom and contained up to 80% canopy. However, the owner further testified that the tree cover in the remainder of the creek bottom is greater than 35% canopy.

The Commission finds and determines that based on the evidence presented to it the entire 35.46 acres of the creek bottom located on the Subject Property has more than 35% tree canopy and should be classified as wasteland.

V. CONCLUSION

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

For all of the reasons set forth above, the appeal of the Assessor should be denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Adams County Board of Equalization determining the assessed value of the Subject Property for tax year 2016 is affirmed.²⁶

²⁶ 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.

2. The assessed value of the Subject Property for tax year 2016 is:

Land:	\$1,609,010
<u>Improvements:</u>	<u>\$ 37,735</u>
Total:	\$1,646,745

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Adams County Treasurer and the Adams 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 year 2016.
7. This Decision and Order is effective for purposes of appeal on August 31, 2017.

Signed and Sealed: August 31, 2017.

Steven A. Keetle, Commissioner

SEAL

Robert W. Hotz, Commissioner

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