

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert O. Iiams,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 16A 0035

Decision and Order Affirming the
Determination of the Saunders
County Board of Equalization

Background

1. The Subject Property is an 80 acre agricultural parcel, with a legal description of: W ½ SE 23-14-5 (80 Acres), Saunders County, Nebraska.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$209,660 for tax year 2016.
3. The Taxpayer protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$148,450 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$209,600 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 August 31, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Robert O. Iiams and Rose Marie Maly Iiams were present at the hearing (Taxpayer).
8. Steven Twohig, Saunders County Attorney and Kyle Morgan, Head Appraiser for the Saunders County Assessor’s Office (the County Appraiser) 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

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 alleged that the assessed value of timbered grassland was too high compared to its assessed value in prior years.
17. The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
18. The Taxpayer alleged that the County Assessor did not take into account the slope for some portions of the Subject Property or water intrusion in the southeast corner of the property when determining assessed values.
19. The Taxpayer stated that all land classified as timbered grassland on the Subject Property should be reclassified and assessed as waste.

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).

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.).

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

20. The Taxpayer presented topographical maps, soil maps, photographs, and soil inventory reports for the Subject Property.
21. The County Appraiser stated that the County used the soil classifications from the Soil Survey of Saunders County and the corresponding classifications of the Property Tax Administrator when classifying land and determining assessed values.
22. The information presented to the Commission indicates that the soil classifications used by the County factor in the slope of the land in addition to the soil composition.
23. The County presented a listing of over 125 sales of agricultural and horticultural land used to determine per acre values for agricultural and horticultural land in Saunders County. These determinations included land classified as waste and land classified as timbered grassland.
24. The County performed a study that indicated that there was not a difference in sales prices between land with a potential for flooding and land without that potential for tax years 2014 through 2016.
25. The Taxpayer alleged that the assessed value of the Subject Property should be lowered because agricultural incomes were decreasing.
26. The Taxpayer did not present any information which quantified the impact the purported decline in agricultural incomes should have on the assessed value of the Subject Property.
27. 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.
28. 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: \$209,600
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders 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 on DATE.

Signed and Sealed: DATE

Steven A. Keetle, Commissioner