

**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 Reversing the  
Determinations of the Jefferson  
County Board of Equalization

**Background**

1. The Subject Property is an unimproved parcel with a legal description of: Pt E ½ 16-2-2, 161.74 acres, Jefferson County, Nebraska.
2. The Jefferson County Assessor (the County Assessor) assessed the Subject Property at \$230,465 for tax year 2016.
3. The Taxpayer protested this value to the Jefferson County Board of Equalization (the County Board) and requested an assessed value of \$113,218 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$230,465 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$246,310 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$98,238 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$246,310 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on August 18, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven A. Keetle.
10. Darrell D. Bruns was present at the hearing (Taxpayer).
11. Mary A. Banahan, Jefferson County Assessor, was present for the County Board.

**Applicable Law**

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>

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

13. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
14. 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>
15. 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>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
17. 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>
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the Subject Property was not agricultural land and horticultural land and therefore shouldn't be assessed based on the market value for agricultural or horticultural purposes.
20. The Subject Property contains 132.56 acres which are subject to a Warranty Easement Deed into the Wetland Reserve Program (WRP). By enrolling the Subject Property in the WRP, the Taxpayer received a one-time payment and in exchange encumbered the property with a perpetual easement. This easement prohibits the use of the Subject Property for agricultural and horticultural purposes that conflict with its use as restored wetlands.

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<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.).

21. Land held under a WRP easement and land used for recreational purposes are not considered to be agricultural land and horticultural land and must be valued at its actual value.<sup>9</sup>
22. The Taxpayer and the Assessor both indicated that there had been no sales of WRP land or recreational land in Jefferson County during the applicable sales period.
23. The Assessor did not use sales of WRP land or recreational land from outside of Jefferson County to determine assessed values of WRP or recreational land in Jefferson County.
24. The Assessor's practice of not using sales of WRP land or recreational land that occur outside of her county even when there are no such sales occurring in her county is not prohibited by Nebraska Statutes or the Nebraska Administrative Code (the Regulations).
25. The Assessor indicated that because there were no comparable sales in Jefferson County, she categorized the soil types on the Subject Property into the Land Valuation Groups (LVG) that they would have had as grassland. She then valued the Subject Property as grassland as she believed she was required by statutes and regulation.<sup>10</sup>
26. Because grassland is a type of agricultural land and horticultural land and is assessed at 75% of its market value, the Assessor then multiplied the assessed values of each agricultural land and horticultural land LCG by 135% to arrive at the market value for each acre on the Subject Property.
27. The valuation methods used by the Assessor for the 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 at all and must be valued at its actual value.<sup>11</sup>
28. The Assessor indicated that the value of the Subject Property was higher in tax year 2017 because the value of the grassland acres of the agricultural and horticultural land class of property had increased.
29. The Taxpayer presented a Uniform Rural Appraisal Report (the Appraisal) performed in conformity with the Uniform Standards of Appraisal Practice which valued the Subject Property at \$162,000 as of January 1, 2016.
30. The Nebraska Supreme Court has held that when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>12</sup>

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<sup>9</sup> Title 350, Neb. Admin. Code, ch 14, §002.06B (3/15/09), Title 350 Neb. Admin. Code, ch 10, §002.15J (10/26/2014)

<sup>10</sup> There was discussion of the fact that portions of the Subject Property classified as grassland under this system were not actually grassland prior to being enrolled in the WRP program but rather dryland cropland however the Commission will not address that issue as it does not have an impact on the value of the property for tax years 2016 and 2017.

<sup>11</sup> There is a provision that suggests that Government Program Land such as Conservation Reserve Program land or other programs where the land remains classified as agricultural or horticultural land should be classified as its current use such as grassland or timbered grassland, however land under a WRP easement and land used for recreational purposes are **not** considered to be agricultural land and horticultural land and must be valued at its actual value. See, Title 350, Neb. Admin. Code, ch 14 §§004.04E and 002.06B (3/15/09)

<sup>12</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty Bd of Equal*, 285 Neb. 120, 825 N.W.2d 447 (2013) citing *US Ecology v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999) and *Schmidt v. Thayer Cty. Bd. of Equal.*, 10 Neb.App. 10, 624 N.W.2d 63 (2001).

31. The Appraisal assessed the Subject Property as WRP and recreational land and utilized sales from other counties with similar limitations on use due to WRP acres.
32. When using comparable sales, the best comparables are those that are more similar to the Subject Property in terms of location, use, size, date of sale.<sup>13</sup> In this case, there is a unique restriction on the property: It is land held under a WRP easement which restricts the use of the property.
33. The Taxpayer indicated that he believed the market value of WRP land was the same for tax years 2016 and 2017.
34. In his protest to the County Board, the Taxpayer indicated that the assessed value of the Subject Property did not take into account damage to the Subject Property caused by flooding in 2015.
35. At the hearing on appeal, the Taxpayer asserted that he was no longer pursuing the issue of the impact of the flooding damage on the assessed value of the Subject Property and he presented no information or argument to this issue.
36. Based on the evidence presented the Commission determines that the assessed value of the Subject Property for tax years 2016 and 2017 is \$162,000.
37. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
38. The Taxpayer has 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 vacated.

## 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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax years 2016 and 2017 is \$162,000.
3. This Decision and Order, if no further action is taken, 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 on November 8, 2017.

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<sup>13</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

Signed and Sealed: November 8, 2017

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Steven A. Keetle, Commissioner