

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William C. Cronican,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 16A 0087 & 16A 0088

Decision and Order

For the Appellant:
William C. Cronican,
Pro Se

For the Appellee:
John R. Palmtag,
Deputy Otoe County Attorney

The appeal was heard before Commissioners Steven Keetle and James Kuhn

I. THE SUBJECT PROPERTY

The Subject Property consists of two contiguous parcels located in Otoe County, Nebraska. The legal description of the 7.88 acre parcel in Case No. 16A 0087 is found at Exhibit 1. The legal description of the 11.3 acre parcel in Case No. 16A 0088 is found at Exhibit 2. The property record cards for the Subject Property are found at Exhibits 6 and 4 respectively.

II. PROCEDURAL HISTORY

The Otoe County Assessor determined that the assessed value of the portion of the Subject Property in Case No. 16A-087 was \$26,790 for tax year 2016. William C. Cronican (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$788. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$26,790.¹

The Otoe County Assessor determined that the assessed value of the Subject Property in Case No. 16A-088 was \$38,420 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$11,760. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$38,420.²

¹ Exhibit 1.

² Exhibit 2.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on December 19, 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

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. APPLICABLE LAW

A. Valuation

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. Agricultural or horticultural purposes includes the following uses of land:

- (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.²¹

Under Nebraska law, wasteland includes,

land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes....²²

Recreational shall mean, “all parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.”²³ Predominant use shall mean, “the most common, frequent, or prevailing use of the land.”²⁴

B. Equalization

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 Title 350 Neb. Admin. Code ch. 14, §002.54. Rev. 3/15/09.

²³ Title 350 Neb. Admin. Code, ch. 10, §001.05E. Rev. 3/15/09.

²⁴ Title 350 Neb. Admin. Code, ch. 10, §001.05E. Rev. 3/15/09.

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁷ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.²⁸ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²⁹ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.³⁰ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³¹ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”³² “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³³

V. SUMMARY OF EVIDENCE AND ANALYSIS

The Taxpayer owns three contiguous parcels in Otoe County, the two parcels which make up the Subject Property as well as a third parcel that was not protested or appealed. All three of the parcels owned by the Taxpayer are classified as recreational land by the County for tax year

²⁵ *Neb. Const.*, Art. VIII, §1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁰ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³³ *Id.* at 673, 94 N.W.2d at 50.

2016.³⁴ The Taxpayer alleges that the Subject Properties should be classified as agricultural and horticultural land rather than as recreational land, and that the majority of the acres on the Subject Property should be classified as waste.

The Taxpayer testified that he cash rented the Subject Properties for around \$650 in tax year 2016. The Taxpayer presented a Program Year 2016 Report of Commodities Farm and Tract Detail Listing for the three parcels owned by the Taxpayer which indicates that 5.07 acres were planted in corn.³⁵ The Taxpayer testified that his renter alternately plants corn and soybeans on the subject property and rotates them each year. The Taxpayer testified that he and his wife purchased the Subject Property as a place to retire outside of the city. The entire Subject Property contains tree cover and grass, the 7.88 acre parcel is adjacent to a road and contains bluffs, natural springs, and a pond, the adjacent 11.3 acre portion of the Subject Property is bottom land located on a river. The Taxpayer utilizes the Subject Property for hunting and fishing on the weekends estimating that he hunted on the property 12 days and fished 15 times on the Subject Property in 2016. The Taxpayer has two travel trailers stored on the Subject Property, which may be taken to other locations for camping, but are also utilized for camping on the Subject Property. Additionally the Taxpayer cuts and splits firewood from the Subject Property for personal use. The Taxpayer offered no evidence of the market value or per acre value for the portion of the Subject Property utilized as crop ground for agricultural and horticultural purposes.

Therese Gruber, the Otoe County Assessor (the Assessor) testified that she inspected the Subject Property in preparation for the hearing before the Commission and had inspected it at least three other times since 2011. The Assessor testified that approximately 5 acres of land was planted in crop when she inspected the Subject Property, less than one acre on the 7.88 acre parcel and the remainder on the 11.3 acre parcel. There is also a small cabin or shed on the Subject Property near the river the Assessor though was used for the storage of recreational equipment and to which the County has assigned no value.

³⁴ The third parcel that was not appealed is not classified as agricultural or horticultural land and it's status has no bearing on the classification of the Subject Properties as agricultural or horticultural land.

³⁵ Two of the parcels are the Subject Properties, the third parcel was not appealed.

The Assessor testified that she bases her decision to classify a parcel as agricultural and horticultural or recreational on the all of the uses of the property. The classification of a parcel in Otoe County is determined by the primary use of the property as a whole. The Assessor testified that the only acres that are classified as waste in Otoe County are streams and creek beds located on a parcel of land classified as agricultural and horticultural, because streams and creek beds enhance the recreational uses of property in Otoe County.

The Assessor testified that it is common in Otoe County for a recreational property to contain a small amount of land used for agricultural and horticultural purposes, often intended to generate sufficient income to pay the property taxes on the parcel. The Assessor offered the Property Record Files of several properties to demonstrate the comparability of assessments as well as recent sales of comparable property in Otoe County.³⁶ The record before the Commission in these appeals does not contain any Property Record Files for parcels classified as agricultural or horticultural land in Otoe County.

The Nebraska Supreme Court in *Agena v. Lancaster County Board of Equalization*, held that when determining how a parcel containing agricultural land and horticultural land is primarily used, an assessment official must assess the parcel based upon the primary use of the entire parcel and not independently assess the uses of the various portions of the parcel.³⁷

The Nebraska Administrative Code defines the term “primarily used” as “the use of the land is mainly agricultural or horticultural.”³⁸ The term “mainly” is not defined in Nebraska law. However, “mainly” is defined elsewhere in relevant part as, “in the principal respect: for the most part: chiefly.”³⁹ Regarding the “primarily used” analysis for a parcel, Nebraska law does not make any single factor determinative. Therefore, the determination of whether a parcel is primarily used for agricultural or horticultural purposes or for recreational purposes must be based on the totality of the evidence, including any relevant factors.

The evidence indicates that the Subject Property is frequently used for recreational purposes including hunting, fishing, camping, and general relaxation and diversion. The Commission also

³⁶ See, Exhibits 7 through 15

³⁷ *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 862-863, 758 N.W.2d 363, 373 (2008).

³⁸ Title 350 Neb. Admin. Code, ch 14 §002.56 (03/15/2009).

³⁹ *Webster's Third New International Dictionary*, Merriam-Webster, Inc. (2002), p. 1362.

finds it significant that a majority of the acres of the Subject Property are not used for agricultural or horticultural purposes. The evidence presented indicates that other properties containing a higher proportion of land used for agricultural and horticultural purposes are classified as recreational in Otoe County. The evidence indicates that the uses of portions of the Subject Property for agricultural or horticultural purposes and the income the Taxpayer derives from this use are incidental to the recreational uses of the Subject Property.

The Commission finds that there is not clear and convincing evidence that the County Board's determination that the Subject Property constitutes recreational land was arbitrary or unreasonable. The Subject Property was assessed uniformly and proportionally using the same criteria for classification and valuation methodology used for all property in Otoe County.

VI. 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 Taxpayer is denied.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Otoe County Board of Equalization determining the value of the Subject Property for tax year 2016 are affirmed.⁴⁰
2. The assessed value of the Subject Property for tax year 2016 are:

Case No. 16A-087: \$26,790

Case No. 16A-088: \$38,420

⁴⁰ 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.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe 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 May 22, 2018.

Signed and Sealed: May 22, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

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