

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Terry L. and Patricia J. Petersen,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 16R 0012

Decision and Order Reversing the Decision
of the Otoe County Board of Equalization

Background

1. The Subject Property is 30.18 acre parcel improved with a 616 square foot residence and numerous outbuildings located in Otoe County, Nebraska. The legal description of the parcel is 32-8-13 S1/2 LOT 1 SE1/4 ALSO DESC AS S 30 AC OF SE1/4 30 AC BELMONT.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$110,490 for tax year 2016.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$110,490 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 24, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Terry L. Petersen was present at the hearing with his attorney, John W. Voelker.
8. John R. Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christina Smallfoot, Deputy Otoe County Assessor 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

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 Subject Property was assessed as a 30.18 acre rural residential parcel. The residence, various outbuildings, and a one acre home site were assessed as rural residential. The remaining 29.18 acres were assessed as rural residential excess acres⁹, not as agricultural land and horticultural land.
17. Terry Petersen informed the Commission that the home had been rented to a tenant at \$450 per month. He said that in addition to the residence and the home site, the tenant was given access to approximately five acres of the parcel. He said the tenant had grazed goats on those five acres.

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).

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 According to the property record card for the Subject Property, the home site was assessed at \$24,000. The next four acres were assessed at \$3,800 per acre. The next five acres were assessed at \$3,000 per acre. The remaining 20 acres were assessed at \$2,250 per acre.

18. Mr. Petersen explained that 10.99 acres of the parcel were in grass, 17.47 acres were a silted spill pond created by a natural resources district, and the remainder of the parcel was treed.
19. Mr. Petersen stated that grass was baled on approximately 10.99 acres, producing \$400 to \$500 in revenue which was shared under a 50/50 agreement.
20. “Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, 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.”¹⁰
21. “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.”¹¹
22. The Commission finds that the 50/50 agreement regarding the production of hay bales from the 10.99 acres is “commercial production.”
23. The Commission therefore finds that the primary use of the parcel, excluding land associated with a building or enclosed structure located on the parcel, is for agricultural or horticultural purposes, not for residential purposes.
24. Therefore, the Commission finds that the one acre home site, the residence, and the outbuildings should be valued as residential property, but the remaining 29.18 acres should be assessed as agricultural land and horticultural land.
25. According to the property record card, the residence and outbuildings should be valued at \$10,995.¹² No other evidence was offered to quantify the value of these improvements.
26. The one acre home site should be valued at \$24,000. No other evidence was offered to quantify the value of the rural residential home site.
27. The 10.99 acres of grass land should be equalized with other comparable grass land in Otoe County, and should not be assessed as excess rural residential acres.
28. The Subject Property was located in Market Area 8000 in Otoe County.
29. No property record card was provided to the Commission to indicate grassland values for Market Area 8000 for tax year 2016.
30. “The commission may take notice of ... statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county ... which have been made known to the commission...”¹³
31. Grassland in Market Area 8000 was assessed at a weighted average of \$2,006 per acre for tax year 2016.¹⁴ Therefore, the Commission finds that the 10.99 acres of grassland on the Subject Property should be valued at \$22,046 for tax year 2016.¹⁵

¹⁰ Neb. Rev. Stat. Section 77-1359(1)(2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. Section 77-1359(2)(a)(2016 Cum. Supp.).

¹² Residence replacement cost new less depreciation = \$10,085. Site improvements (outbuildings) = \$910.

¹³ Neb. Rev. Stat. Section 77-5016(6)(2016 Cum. Supp.).

¹⁴ See, *2016 Reports & Opinions of the Property Tax Administrator, Otoe County, April 2016*, page 29.

¹⁵ 10.99 acres x \$2,006 per acre = \$22,046.

32. Mr. Petersen said that the spill pond was approximately ¼ miles from the residence, that it was no more than 30 inches deep at its greatest depth, and that no motorized watercraft were ever used on the pond.
33. “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.”¹⁶
34. The Commission finds that the 17.47 acres in silted pond “cannot be used economically and are not suitable for agricultural or horticultural purposes” and therefore should be classified as wasteland.
35. No property record card was provided to indicate assessed values in Market Area 8000 for wasteland or for treed acres for tax year 2016.
36. 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.
37. 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 and reversed

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value and equalized value of the Subject Property for tax year 2016 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

| | |
|---------------------|------------------|
| Agricultural Land | \$ 22,046 |
| Home Site | \$ 24,000 |
| <u>Improvements</u> | <u>\$ 10,995</u> |
| Total | \$ 57,041 |

3. This Decision and Order, if no further action is taken, 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.

¹⁶ NAC Title 350, Chapter 14, §002.54 (Rev. 3/15/09).

6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on August 30, 2017.

Signed and Sealed: August 30, 2017

Robert W. Hotz, Commissioner