

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Diamond Ridge Investments, LLC,
Appellant,

v.

Custer County Board of Equalization,
Appellee.

Case Nos: 17A 0114, 17A 0115 & 17A
0016

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is three parcels of Agricultural land consisting of grass land and dry land, with a legal description of: Sec. 18-19-21 Lots 1-3 & E1/2 SW & SE1/4 All N Hwy, W1/2 NE, E1/2NW 313.03 Acres Victoria TWP, Sec 18-19-21 Lots 3-4 & E1/2 SW & SE1/4 All S Hwy; 192.03 Acres Victoria TWP, Sec 13-19-22 S1/2 & NE1/4 N of Hwy (NE1/4) 156.2 Acres, Victoria TWP.
2. The Custer County Assessor (the County Assessor) assessed the Subject Properties at \$317,003 (17A 0114), \$198,452 (17A 0115), and \$164,409 (17A 0116), for tax year 2017.
3. Diamond Ridge Investments, LLC, (the Taxpayer) protested these values to the Custer County Board of Equalization (the County Board) and requested assessed values of \$218,670 (17A 0114), \$162,413 (17A 0115), and \$131,397 (17A 0116) for tax year 2017.
4. The County Board determined that the taxable value of the Subject Properties was \$317,003 (17A 0114), \$198,452 (17A 0115), and \$164,409 (17A 0116), for tax year 2017.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 5, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. D. L. Burklund was present at the hearing for the Taxpayer.
8. Steven Bowers was 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

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

10. The Commission's review of the determination of the County Board of Equalization is de novo.²
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 feels his land should be valued the same as grassland such as the properties that adjoin his properties to the west. The grassland parcels to the west are comprised of lower rolling hills whereas the Subject Properties are a mixture of deep canyons, grass land and dry land. The Taxpayer has no issue with the values of the dry land.
17. A large portion of the Subject Properties burned in 2012 by an unknown cause. The Taxpayer stated the cedar trees are now bare but are a hindrance to grazing as the branches are now very hard; cattle cannot graze under the burned cedar trees as the branches are not pliable. The Taxpayer stated he cuts about \$5,000 worth of cedar trees off the Subject Property every year.

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 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.).

18. The Taxpayer feels his soil type VBE is the same as the neighboring parcel's soil type VAE and provided definitions for both soil types. Soil type VBE is valued by the assessor at \$955 per acre whereas soil type VAE is valued at \$530 per acre.
19. Although the definitions of VBE and VAE are very similar, they are two separate classifications of soil types as defined by the Soil Conservation Service. Some of the Taxpayer's comparable properties have the soil type VBE and are being valued at the same rate as the Subject Properties. In looking at the aerial photos provided by the Taxpayer, it appears the properties to the north of the Subject Property are most similar; however, no property record cards of those parcels were provided to the Commission.
20. The County Board argued that the comparable properties provided by the Taxpayer were not truly comparable as those parcels were not tree covered and were absent of the deep canyons present on the Subject Property. The County Board argued that although the soil types VBE and VAE are similar, they are not the same and therefore valued differently.
21. The Taxpayer argued that his canyon ground should have a lower value due to the steep terrain, which makes the ground harder to graze than rolling grass land like the neighboring land comparables. The Taxpayer stated he can graze 85 pairs on the Subject Properties whereas he was able to graze 90 pairs prior to the fire.
22. The Commission is not persuaded that the Subject Properties are being valued differently than the neighboring properties. Like LVG codes are being valued at the same rate per acre for all the properties discussed in this hearing. If evidence exists of more similar properties, such as the ones to the north, with more canyons and cedar trees being valued differently, it was not presented at the hearing.
23. 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.
24. 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 Properties for tax year 2017, is Affirmed.
2. The taxable values of the Subject Properties for tax year 2017 are:

17A 0114: Total	\$317,003
17A 0115: Total	\$198,452
17A 0116: Total	\$164,409

3. This Decision and Order, if no further action is taken, shall be certified to the Custer County Treasurer and the Custer 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 2017.
7. This Decision and Order is effective on July 12, 2018.

Signed and Sealed: July 12, 2018

James D. Kuhn, Commissioner