

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Vickie L. Wiers,
Appellant,

v.

Richardson County Board of Equalization,
Appellee.

Case Nos: 18A 0140, 18A 0141
& 18A 0142

Decision and Order Affirming the Decisions
of the Richardson County Board of
Equalization

Background

1. This Decision and Order pertains only to tax year 2018 for three distinct parcels of agricultural land (hereinafter referred to as the Subject Property) in Richardson County, Nebraska.
2. The parcel in Case No. 18A 0140 consists of 110.27 acres, with a property identification number of 740021923. The Richardson County Assessor (the County Assessor) assessed the parcel at \$352,280.
3. The parcel in Case No. 18A 0141 consists of 80 acres, with a property identification number of 740163523. The County Assessor assessed the parcel at \$188,609.
4. The parcel in Case No. 18A 0142 consists of 80 acres, with a property identification number of 740005545. The County Assessor assessed the parcel at \$228,780.
5. The Taxpayer protested these values to the Richardson County Board of Equalization (the County Board) and requested assessed values of \$299,438 for the parcel in Case No. 18A 0140, \$160,318 for the parcel in Case No. 18A 0141, and \$194,463 for the parcel in Case No. 18A 0142.
6. The County Board determined that the taxable value of the parcels were \$352,280 for the parcel in Case No. 18A 0140, \$187,409 for the parcel in Case No. 18A 0141,¹ and \$228,780 for the parcel in Case No. 18A 0142.
7. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
8. A Single Commissioner hearing was held on July 10, 2019, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
9. Vickie L. Wiers was present at the hearing.
10. Pamela G. Vice, the Richardson County Assessor, was present for the County Board.

¹ In response to the protest brought by the taxpayer, the decision of the County Board determined the value of the parcel at an amount less than the assessment amount.

Applicable Law

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²
12. The Commission's review of a determination of the County Board of Equalization is de novo.³
13. 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."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
14. 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
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
16. 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
17. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

18. The Taxpayer makes two primary contentions in these appeals: First, that a portion of each parcel should have been assessed as acres under the Conservation Reserve Program (CRP) under the Farm Service Agency (FSA) of the United States Department of Agriculture (USDA); and second, that the Subject Property should receive a valuation

² Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

³ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *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).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

that is equalized with another parcel of agricultural land and horticultural land in Richardson County.

19. The Taxpayer asserted a number of acres in each appeal were assessed as dryland acres when they should have been assessed as CRP acres: 86.07 acres of the parcel in Case No. 18A 0140; 41.22 acres of the parcel in Case No. 18A 0141; and 53.09 acres of the parcel in Case No. 18A 0142. Nothing was provided to support the assertion that the acres were actually enrolled as CRP acres. The County Assessor had not been provided with any information that would verify that any of the acres of the Subject Property had been enrolled in the CRP.
20. The Taxpayer also asserted that the taxable value of the Subject Property was not equalized with similar agricultural parcels in Richardson County. The information the Taxpayer provided related to two 40 acre grass parcels with property identification numbers of 740010166 and 740005642. Regarding the first parcel, the Taxpayer provided two aerial photographs of the property and a two page printout of tax year 2019 assessment information from gWorks. The valuation of a subject property for a subsequent year is not relevant.¹⁰ Regarding the second parcel, the Taxpayer provided a copy of a flyer for a Public Land Auction.
21. In addition to the main assertions made by the Taxpayer, the Commission reviewed 19 property record cards provided by the Taxpayer to determine whether the assessments of the properties were done uniformly and proportionately as compared to the assessments of the Subject Property.
22. All agricultural land and horticultural land in the same market area of the Subject Property was analyzed on the basis of soil types based upon the most recent soil survey.¹¹ Each soil type was then assigned to a Land Capability Group (LCG). Soil types that had similar capabilities and characteristics were placed in the same LCG.¹²
23. The Taxpayer provided property record cards for six parcels of agricultural land in relation to Case No. 18A 0140. For each parcel, the value per acre for each LCG was consistent with the value per acre for the same LCG of the Subject Property.
24. The Taxpayer also provided property record cards for 13 parcels of agricultural land in relation to Case No. 18A 0141. For each parcel, the value per acre for each LCG was consistent with the value per acre for the same LCG of the Subject Property.
25. Further, no information was provided that would indicate that the LCGs of the Subject Property were not assessed consistently with the other parcels of agricultural land and horticultural land parcels within the same market area of Richardson County.

¹⁰ The assessed value for real property may be different from year to year, dependent upon the circumstances. See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). For this reason, a prior year's assessment is not relevant to the subsequent year's valuation. 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).

¹¹ See Title 350 NAC, Chapter 14, Section 004.08.

¹² "A few of the other soil characteristics that help to determine land capability and subsequently the land capability group are texture, attributes, saline or alkali conditions, water tables, flooding hazards and depth of soil over bedrock or gravel. All of these characteristics affect the capability of a soil." Title 350 NAC, Chapter 14, Section 004.08C.

26. 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.
27. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

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 2018 are affirmed.
2. The taxable value of the Subject Property for tax year 2018 are as follows:

18A 0140: \$352,280

18A 0141: \$187,409

18A 0142: \$228,780

3. This Decision and Order, if no further action is taken, shall be certified to the Richardson County Treasurer and the Richardson County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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 2018.
7. This Decision and Order is effective on October 30, 2020.

Signed and Sealed: October 30, 2020

Robert W. Hotz, Commissioner