

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry L. Clark,
Appellant,

v.

Stanton County Board of Equalization,
Appellee.

Case No: 18A 0125

Decision and Order Reversing the
Determination of the Stanton
County Board of Equalization

Case Nos: 18A 0124, 18A 0126, 18A 0127,
18A 0128 & 18A 0129

Decision and Order Affirming the
Determination of the Stanton
County Board of Equalization

Background

1. The Subject Property in Case No 18A 0124 is a 160 acre agricultural parcel with a legal description of: SE 11-23-1 Elkhorn Precinct 160 Acres, Stanton County, Nebraska.
2. The Stanton County Assessor (the County Assessor) assessed the Subject Property at \$722,320 for tax year 2018.
3. The Taxpayer protested this value to the Stanton County Board of Equalization (the County Board) and requested an assessed value of \$719,920 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$722,320 for tax year 2018.
5. The Subject Property in Case No. 18A 0125 is a 79.98 acre agricultural parcel with a legal description of: PT W ½ NW 11-23-1 Elkhorn Precinct 79.98 Acres, Stanton County, Nebraska.
6. The County Assessor assessed the Subject Property at \$359,045 for tax year 2018.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$350,080 for tax year 2018.
8. The County Board determined that the taxable value of the Subject Property was \$359,045 for tax year 2018.
9. The Subject Property in Case No. 18A 0126 is an 80 acre agricultural parcel with a legal description of: N ½ SE 12-23-1, Elkhorn Precinct 80 Acres, Stanton County, Nebraska.
10. The County Assessor assessed the Subject Property at \$366,775 for tax year 2018.
11. The Taxpayer protested this value to the County Board and requested an assessed value of \$359,115 for tax year 2018.
12. The County Board determined that the taxable value of the Subject Property was \$366,775 for tax year 2018.

13. The Subject Property in Case No. 18A 0127 is an 80 acre agricultural parcel, with a legal description of: N ½ SW 12-23-1, Elkhorn Precinct 80 Acres, Stanton County, Nebraska.
14. The County Assessor assessed the Subject Property at \$432,685 for tax year 2018.
15. The Taxpayer protested this value to the County Board and requested an assessed value of 394,325 for tax year 2018.
16. The County Board determined that the taxable value of the Subject Property was \$432,685 for tax year 2018.
17. The Subject Property in Case No. 18A 0128 is a 60 acre agricultural parcel with a legal description of: N 60 A E ½ NW 13-23-1, Elkhorn Precinct 60 Acres, Stanton County, Nebraska.
18. The County Assessor assessed the Subject Property at \$288,300 for tax year 2018.
19. The Taxpayer protested this value to the County Board and requested an assessed value of \$287,035 for tax year 2018.
20. The County Board determined that the taxable value of the Subject Property was \$288,300 for tax year 2018.
21. The Subject Property in Case No. 18A 0129 is an 80 acre agricultural parcel, with a legal description of: W ½ NW 13-23-1, Elkhorn Precinct 80 Acres, Stanton County, Nebraska.
22. The County Assessor assessed the Subject Property at \$513,535 for tax year 2018.
23. The Taxpayer protested this value to the County Board and requested an assessed value of \$508,535 for tax year 2018.
24. The County Board determined that the taxable value of the Subject Property was \$513,535 for tax year 2018.
25. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
26. A Single Commissioner hearing was held on May 30, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
27. Larry L. Clark was present at the hearing.
28. Cheryl Wolverton, the Stanton County Assessor, was present for the County Board.

Applicable Law

29. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
30. The Commission's review of the determination of the County Board of Equalization is de novo.²

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

² 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).

31. 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
32. 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
33. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
34. 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
35. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

36. The Taxpayer did not argue that the value of any of the improvements on any of the Subject Properties should be different, but rather, he only offered information and argument regarding the land valuations.
37. The Taxpayer alleged that the value of the land components of the Subject Properties should not have increased from the prior year’s values.
38. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
39. The County Assessor presented a chart of the per acre land values used when assessing parcels classified as agricultural or horticultural in Stanton County. The chart shows that the per acre values remained the same for the 2016, 2017 and 2018 assessment years with

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

the exception of home site acres which increased from \$10,000 for the first acre in 2016 and 2017 to \$15,000 for the first acre in 2018.

40. The County Assessor offered the Property Record File (PRF) for each of the Subject Properties. The PRFs demonstrate that the County Assessor reclassified acres on every one of the Subject Properties with the exception of the parcel found in Case No. 18A 0129.
41. The Taxpayer alleged that the value of the Subject Properties changed at a different rate than that of other parcels. The Taxpayer presented information from the County Assessor's web site showing that other agricultural or horticultural parcels had values that changed from the prior assessment year, but the Taxpayer did not present the PRF or other information that demonstrated the reclassification of acre types from the prior year to allow the Commission to analyze the Taxpayer's claim.
42. The Taxpayer alleged that rural residential housing development in the county was unduly influencing the assessed value of the farm home site acre values but did not present any information regarding the sales or assessment of rural residential properties.
43. The Taxpayer alleged that when acres were classified as CRP, their assessed value went down, but the owners of CRP land were still able to collect fees for hunting leases on those acres. The Subject Properties do not have any acres classified as CRP and no PRF or other information for land containing CRP acres was presented. No hunting lease information for land classified as CRP was presented.
44. The County Assessor's acre valuation table indicated that CRP acres were assessed at values equal to or greater than acres classified as grassland that had acres in the same land capability group.¹¹
45. The Taxpayer discussed the use and classification of the acres located on the Subject Properties. The Taxpayer did not present information to demonstrate that the classifications of the acres on the Subject Property as determined by the County Assessor were incorrect except in two instances as set forth below.
46. On the parcel in Case No 18A 0125 the Taxpayer demonstrated that the 2.95 acres classified as grassland acres contain a creek that runs through the parcel. Classifying these acres as water/waste would change their per acre value to \$190, reducing the assessed value of those acres from \$5,055 to \$560.
47. The Commission finds and determines that the assessed value of the parcel of the Subject Property found in Case No. 18A 0125 is \$354,550 for tax year 2018.
48. On the parcel in Case No. 18A 0128 the Taxpayer demonstrated that the 5.3 acres classified as timber acres contain a creek that runs through the parcel. However, classifying these acres as water/waste would not change their per acre value because the County Assessor has valued the timber acres on this parcel at \$190 per acre and the per acre value of water/waste is also \$190 per acre.

¹¹ Acres are classified into Land Capability Groups based on their soil type.. See 350 Neb. Admin. Code, ch 14 § 004.08.

49. In Case No. 18A 0125 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.
50. In Case No. 18A 0125 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.
51. In Case Nos. 18A 0124, 18A 0126, 18A 0127, 18A 0128, and 18A 0129 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.
52. In Case Nos. 18A 0124, 18A 0126, 18A 0127, 18A 0128, and 18A 0129 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 Decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 18A 0125 for tax year 2018, is vacated and reversed.
2. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 18A 0124, 18A 0126, 18A 0127, 18A 0128, and 18A 0129 for tax year 2018, are affirmed.
3. The taxable value of the Subject Properties for tax year 2018 are:

Case No. 18A 0124

Land	\$689,765
<u>Improvements</u>	<u>\$ 32,555</u>
Total	\$722,320

Case No. 18A 0125

<u>Land</u>	<u>\$354,550</u>
Total	\$354,550

Case No. 18A 0126

<u>Land</u>	<u>\$366,775</u>
Total	\$366,775

Case No. 18A 0127

Land	\$339,970
<u>Improvements</u>	<u>\$ 92,715</u>
Total	\$432,685

Case No. 18A 0128

<u>Land</u>	<u>\$288,300</u>
Total	\$288,300

Case No. 18A 0129

Land	\$406,930
<u>Improvements</u>	<u>\$106,605</u>
Total	\$513,535

4. This Decision and Order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2018.
8. This Decision and Order is effective on April 3, 2020.

Signed and Sealed: April 3, 2020

Steven A. Keetle, Commissioner