

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Triple KRLD Drakes Club,
Appellant,

v.

Lincoln County Board of Equalization

Case No: 11A 057

Order Affirming the Determination of the
Lincoln County Board of Equalization

For the Appellant:

Richard A. Frerichs,
Taxpayer

For the Appellee:

Joe Wright,
Deputy County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 30.25 acre parcel located in Lincoln County, Nebraska. The legal description of the subject property is found at Exhibit 1. The property record card for the subject property is found at Exhibit 11, pages 16-17.

II. PROCEDURAL HISTORY

The Lincoln County Assessor determined that the assessed value of the subject property was \$81,675 for tax year 2011. Richard A. Frerichs (Taxpayer) protested this assessment to the Lincoln County Board of Equalization (the County Board) and requested an assessed valuation of \$45,375. The Lincoln County Board determined that the assessed value for tax year 2011 was \$81,675.¹ The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on June 11, 2011.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a county board of

¹ Exhibit 1:1.

² See, Neb. Rev. Stat. §77-5016(8) (2010 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

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.”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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 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.⁸

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.”⁹ 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.”¹⁰

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(8) (2010 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 *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

IV. VALUATION

A. Law

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.¹¹

"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."¹² The Courts have held that "[a]ctual value, market value, and fair market value mean exactly the same thing."¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

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.¹⁷

"Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section."¹⁸ "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-132 (Reissue 2009).

unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.”¹⁹

“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.”²⁰

B. Summary of the Evidence

The Lincoln County Assessor, Julie Stenger, as well as two employees of the County Assessor, Charity Farley and Henry Vogt, testified on behalf of the County Board. The Subject Property, an unimproved 30.25 acre parcel of accretion land, was assessed as recreational land, and valued at \$2,700 per acre.²¹ Sales of other recreational parcels in Lincoln County with accretion land and minimal improvements were analyzed in a sales comparison approach and compared to the subject property.²² The County Board relied upon the County Assessor’s assessed value.²³

Richard Frerichs and Leo Behne testified on behalf of the Taxpayer. The Taxpayer testified the subject property was used for recreational purposes, including hunting water fowl and deer, and for fishing. The Taxpayer permanently maintained two sleeping and storage trailers on the parcel, and had two duck and geese blinds on the south bank of the river. The subject property had no other improvements.

The Taxpayer asserted the market value of the parcel was \$1,500 per acre. In support of this assertion, the Taxpayer opined the parcel was completely unique, and should thus be valued differently from other recreational parcels consisting of accretion land. Much of the subject property borders the south bank of the South Platte River. The Taxpayer testified regarding very significant flooding events in 2010 and 2011 and that the flooding had several negative effects on the value of the property: damage to the access road, preventing access by motor vehicles; difficulty to gain access to the trailers and duck blinds due to floodwater; and the deposit of

¹⁹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²⁰ 350 NAC 10-001.05E.

²¹ 11:16-17.

²² Exhibit 12.

²³ Exhibit 1.

alluvial sand and silt over the entire 30.25 acres when flood waters receded, including silt in the pond, which made some uses of the pond dangerous. The Taxpayer asserted that building a dike to prevent flooding on the subject property would be cost prohibitive. The Taxpayer testified that in order to gain access by motor vehicle, the Taxpayer had to hire contractors to repair the access road ten times in 14 years. The Taxpayer also testified that influences outside of the subject property also contributed to the flooding of the subject property, including an airport dike, which pinches floodwater onto the subject property, the construction of a nearby road in 2010, which creates a dike (pinch point) increasing the volume of water flooding the subject property, and the damming of a culvert in March, 2011, which also contributed to the volume of flood water reaching the subject property. The Taxpayer also argued that the location of the nearest diversion dams also contributed to more and unique flooding of the subject property, as one was located upstream 40 miles, but another was positioned downstream only one to two miles. For all of these reasons, the Taxpayer asserted, the subject property floods more often and more severely than the flooding of other recreational accretion land in Lincoln County, including the comparable properties analyzed by the County Assessor.

The Taxpayer testified that other factors also negatively affected the value of the property, including the presence of a city sewer system canal running through the parcel, with a strong odor, the fact the parcel is completely in a flood plain, restricting the Taxpayer's ability to utilize more improvements on the subject property, and the fact a railroad company owns mineral rights in relation to the parcel.

For all of these reasons, the Taxpayer argued, the per acre assessment should be less than other recreational accretion properties in Lincoln County. The Commission finds that the market value of the subject property is adversely affected by flooding and by other influences, however, the Taxpayer has offered no evidence to quantify these negative effects.

V. 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 decision of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Lincoln County Board of Equalization determining the value of the subject property for tax year 2011 is affirmed.
2. The assessed value of the subject property for tax year 2011 is \$81,675.
3. This decision and order, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer and the Lincoln County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2011.
7. This order is effective for purposes of appeal on July 18, 2012.

Signed and Sealed: July 18, 2012

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011Supp.), other provisions of Nebraska Statute and Court Rules.