

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald R. Rutt,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 12A-100, 12A-101, 12A-102,
12R 883

Decision and Order Affirming the
Determination of the Lancaster County
Board of Equalization in 12A-100, 12A-101,
& 12R-883

Decision and Order Reversing the
Determination of the Lancaster County
Board of Equalization in 12A-102

Background

1. A Single Commissioner hearing was held on October 17, 2013, 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.
2. Donald R. Rutt was present at the hearing.
3. Jeff Johnson was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property consists of four parcels totaling 80 acres in rural Lancaster County near the city of Lincoln. The parcels are located at 1011 S.W. 98th Street, Lincoln, Nebraska.
5. The parcels in Case Nos 12A-100, 12A-101, and 12A-102 are assessed to Donald Rutt as unimproved agricultural properties consisting of grassland.
6. The parcel in Case No. 12R-883 is assessed as a rural residential parcel consisting of a residential improvement, a 1.32 acre home site, and excess acres classified as agricultural grassland.
7. The Lancaster County Assessor (County Assessor) assessed the Subject Property in Case No. 12A-100 at \$48,500 for tax year 2012. Donald Rutt protested this value to the County Board. The County Board determined that the taxable value of the Subject Property was \$48,500 for tax year 2012. Donald Rutt appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
8. In Case No. 12A-101, the County Assessor assessed the Subject Property at \$39,800 for tax year 2012. Donald Rutt protested this value to the County Board. The County Board determined that the taxable value of the Subject Property was \$39,800 for tax year 2012. Donald Rutt appealed the determination of the County Board to the Commission.

9. The County Assessor assessed the Subject Property in Case No. 12A-102 at \$40,100 for tax year 2012. Donald Rutt protested this value to the County Board. The County Board determined that the taxable value of the Subject Property was \$40,100 for tax year 2012. Donald Rutt appealed the determination of the County Board to the Commission.
10. In Case No. 12R-883, the County Assessor assessed the Subject Property at \$193,300 for tax year 2012. Donald Rutt protested this value to the County Board. The County Board determined that the taxable value of the Subject Property was \$192,800 for tax year 2012. Donald Rutt appealed the determination of the County Board to the Commission.

Propositions of Law

11. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "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."²
12. 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
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 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."

² *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) (2012 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).

16. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.⁸
17. 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.⁹
18. “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”¹⁰
19. 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

Statement of Facts

20. Jeff Johnson, an employee of the County Assessor, explained that a sales comparison approach was used to value the Subject Property.
21. Johnson further explained that the grassland of the Subject Property was valued as agricultural land and received special valuation. He further explained that since the sales of all such grassland in Lancaster County were influenced by proximity to the city of Lincoln, sales of grassland that was not in proximity to urban influences in six other counties were used to determine the market value of the Subject Property grassland.¹²
22. Donald Rutt argued that grassland sales should not be used for comparison purposes when the grassland purchased is converted to the use of dry land row crop farming. He further argued that larger farm operators are capable of paying more for grass land when they plan to use the land for row crop production.
23. This Commissioner notes that grass land sales from the six uninfluenced counties should not have been used if the use “substantially changed.”¹³
24. Jeff Johnson explained that in Case No. 12A-102, some of the acres of the parcel should have been assessed as waste land rather than as grass land. Based upon aerial photographs of the Subject Property, statements by Jeff Johnson, and the property record cards, this Commissioner finds that five acres were subject to this determination. Since the five acres of waste land appear to have been valued as 3G1 grass land, this

⁸ Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁰ Neb. Rev. Stat. §77-132 (Reissue 2009).

¹¹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

¹² See, Neb. Rev. Stat. §77-1327(4) (2011 Supp.) and 2011 Report and Opinion of the Property Tax Administrator for Lancaster County, pp. 35-55.

¹³ 2011 Nebraska Department of Revenue, Property Assessment Division, State Sales File Practice Manual, p. 101, 146-147, 152.

Commissioner finds that the taxable value of the parcel in Case No. 12A-102 should be \$32,991.¹⁴

25. Jeff Johnson and Donald Rutt both indicated that an internal inspection of the residence in 12R-883 was not completed for tax year 2012. The County Assessor had requested such an inspection but Donald Rutt was unable to grant the inspection due to health reasons.
26. In Case Nos 12A-100, 12A-101, and 12R-883, the Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and act on sufficient competent evidence to justify its actions.
27. In Case Nos 12A-100, 12A-101, and 12R-883, the Taxpayer has not adduced sufficient, 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.
28. In Case No. 12A-102, competent evidence was produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
29. In Case No. 12A-102, there is sufficient, clear, and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.¹⁵

ORDER

IT IS ORDERED THAT:

1. The Decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012 are affirmed in Case No. 12A-100, 12A-101, and 12R-883.
2. The Decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012 is reversed in 12A-102.
3. Taxable value of the Subject Property for tax year 2012 is as follows:

12A-100	\$48,500
12A-101	\$39,800
12A-102	\$32,991
12R-883	\$192,800

4. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

¹⁴ Five acres of 3G1 grass land was valued at \$2,000 per acre and should have been valued at \$100 per acre as waste land. The net result would be a \$9,500 decrease in the total uninfluenced agricultural value of the Subject Property, multiplied by 75% to arrive at special value for the Subject Property of \$32,991.

¹⁵ Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the time of the protest proceeding.

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 2012.
8. This Decision and Order is effective on October 23, 2013.

Signed and Sealed: October 23, 2013

Robert W. Hotz, Commissioner

