

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gene Steffensmeier,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 13C 139

Decision and Order Reversing Platte
County Board of Equalization

1. A Single Commissioner hearing was held on August 7, 2014, at Platte County Courthouse 2610 14th Street Columbus, Nebraska, before Commissioner Salmon.
2. Joseph Steffensmeier (the Taxpayer) was present at the hearing.
3. Tom Placzek, Platte County Assessor, was present for the Platte County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an unimproved commercial parcel, with a legal description of: Lot 1 Steffy Subdivision, 22-17-1E Containing 7.5 acres, Platte County, Nebraska.

Background

5. The Platte County Assessor (the Assessor) assessed the Subject Property at \$225,000 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$112,500 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$225,000 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. 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

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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Taxpayer asserted that the Subject Property was used for agricultural purposes as of the date of assessment. Specifically, the Subject Property was used to grow row crops.
15. The County Assessor indicated that with the exception of accretion acres located along the river, the actual value of agricultural land and horticultural land is not impacted by its potential use for a non-agricultural purpose or non-horticultural purpose.
16. Nebraska Statutes define “agricultural land and horticultural land” as “a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes.”⁸
17. An assessment official must evaluate the primary use of the entire parcel to determine the parcel should be defined as agricultural land or horticultural land.⁹
18. Agricultural or horticultural purposes are defined as, “used for 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.”¹⁰
19. “Agricultural land and horticultural land” must be assessed at 75% of actual value.¹¹
20. All evidence indicates that the Subject Property is agricultural land or horticultural land.

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).

⁸ Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

⁹ *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 862-863, 758 N.W.2d 363, 373 (2008). In *Agena*, the Nebraska Supreme Court specifically rejected a test for primary use that determined if a majority of the area of the parcel was used for agricultural or horticultural purposes.

¹⁰ Neb. Rev. Stat. §77-1359(2) (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-201(2) (Reissue 2009).

21. Because the Subject Property was agricultural land as of the date of assessment, it must be assessed at 75% of actual value for tax year 2013.¹²
22. The evidence before the Commission indicates that the Subject Property was taxed at 100% of actual value, contrary to Nebraska Law.¹³
23. The taxable value of the Subject Property should be \$22,500.¹⁴
24. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”¹⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁶ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁷
25. The Taxpayer asserted that the Subject Property was not equalized with similar parcels. He provided the Commission with maps highlighting the Subject Property and alleged comparable parcels. He also attached the Webshots to the maps of the alleged comparable properties. The County Assessor agreed that the web shots represented the 2013 valuations of the alleged comparable properties.
26. The County Assessor provided the Commission with four sales of commercial properties. He stated that the Subject Property had more highway access than some of the Taxpayer’s alleged comparable properties. He stated that because the Subject Property was only 7.5 acres it was assessed at \$30,000 per acre. He explained that the large properties are assessed at \$15,000 per acre because of the excess land. He did not break down the individual acres in larger parcels. He provided the Commission with property record cards for smaller parcels across the highway that were assessed at \$30,000 an acre for tax year 2013.
27. While the County Assessor presented evidence that the Subject Property was equalized with some parcels, the evidence at the hearing also indicated that the Subject Property was not equalized with other parcels.
28. The County Assessor asserted that 7.5 acre lots with good highway frontage were worth \$30,000 an acre. However, the evidence indicated that the first 7.5 acres of adjacent but larger lots were not treated similarly. While general principles of diminishing returns indicate that additional acres may have lower actual value, the evidence in the hearing indicated that the first 7.5 acres of like parcels has an actual value of \$30,000 per acre.
29. The Commission notes that several of the parcels in the same section have been valued at \$15,000 an acre. The Commission finds that treating the first 7.5 acres of substantially

¹² See, Neb. Rev. Stat. §77-201(2) (Reissue 2009).

¹³ See, Neb. Rev. Stat. §77-201(2) (Reissue 2009).

¹⁴ \$30,000 x .75=22,500.

¹⁵ *Neb. Const.*, Art. VIII, §1.

¹⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

similar properties at different levels of value indicates an obvious discrepancy and resulted in the properties not being equalized.

30. The Commission finds that the Subject Property should be equalized with similar properties at \$15,000 an acre.
31. 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.
32. The Taxpayer has adduced 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.

IT IS ORDERED THAT:

1. The Decision of the Platte County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is \$112,500.
3. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 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 2013.
7. This Decision and Order is effective on August 15, 2014.

Signed and Sealed: August 15, 2014

Nancy J. Salmon, Commissioner