

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald Dale DeRiese,
Appellant,

v.

Franklin County Board of Equalization,
Appellee.

Case Nos: 14A 051, 14A 052

Decision and Order Affirming the Decision
of the Franklin County
Board of Equalization

For the Appellant:
Donald Dale DeRiese,
Pro Se

For the Appellee:
Henry C. Schenker,
Franklin County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of two parcels of agricultural land and horticultural land in Franklin County, Nebraska. The parcel in Case No. 14A 051 consists of 64.95 acres. The parcel in Case No. 14A 052 consists of 57.86 acres. The legal descriptions of the Subject Property are found at Exhibit 1. The property record cards for the Subject Property are found at Exhibit 3.

II. PROCEDURAL HISTORY

The Franklin County Assessor (County Assessor) determined that the assessed value of the Subject Property in Case No. 14A 051 was \$147,025 for tax year 2014.¹ Donald Dale DeRiese (the Taxpayer) protested these assessments to the Franklin County Board of Equalization (the County Board) and requested an assessed valuation of \$118,566.²

The County Assessor determined that the assessed value of the Subject Property in Case No. 14A 052 was \$136,035 for tax year 2014.³ The Taxpayer protested these assessments to the County Board and requested an assessed valuation of \$109,767.⁴

¹ See Exhibit 14:1 and Exhibit 7:1.

² The Taxpayer requested a 40% increase to his 2013 valuation of \$84,690. The Taxpayer combined both Protests onto one Form 422 protest form.

³ See Exhibit 14:1 and Exhibit 7:1.

⁴ The Taxpayer requested a 40% increase to his 2013 valuation of \$78,405.

The County Board determined that the combined taxable value for tax year 2014 for both parcels was \$283,060.⁵

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on July 9, 2015.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁶ When the Commission considers an appeal of a decision of a County Board of 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."⁷

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.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

⁵ Exhibit 1.

⁶ See, Neb. Rev. Stat. §77-5016(8) (2014 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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

⁹ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ 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.¹²

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.”¹³ 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.”¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

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.¹⁶

“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.”¹⁷ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁸ Taxable value is the

¹¹ 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).

¹² *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹³ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

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.²²

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²³ 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.²⁴

Wasteland includes “land that cannot be used economically and [is] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats....”²⁵

Land capability groups (LCG) are “groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification.”²⁶

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²⁵ 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

²⁶ 350 Neb. Admin, ch. 14 §002.41 (03/09).

B. Summary of the Evidence

Donald Dale DeRiese raised four different arguments regarding the assessment of the Subject Property for tax year 2014. DeRiese first argued that all of the agricultural land and horticultural land in Franklin County should have been assessed in one market area. For tax year 2014, the County Assessor assessed agricultural land and horticultural land in two market areas.²⁷ Linda Dallman, the Franklin County Assessor, testified that Market Area One included land along the Republican River, where surface water was often available, and that Market Area Two included all of the agricultural land and horticultural land in Franklin County North of Market Area One. DeRiese objected to the fact that the Subject Property was located in Market Area Two, where assessments were higher.²⁸ However, DeRiese provided no persuasive evidence to support his argument.

DiRiese also disputed the computation of the \$2,600 assessment per acre for acres of the Subject Property classified as LCG 1D land.²⁹ He argued that this subclass of dryland, known as Holdrege Silt Loam, should have been assessed at less than \$2,600 per acre. However, he offered no persuasive evidence to support this assertion.

The Taxpayer also argued that the increase in the valuation of the Subject Property from tax year 2013 to tax year 2014 was too high. He testified that the valuation increase was 73%.³⁰ The assessment of agricultural land and horticultural land in Nebraska includes an evaluation of sales from the same market area in the most recent three years.³¹ The assessed value per acre for each LCG was based upon these sales.³² Therefore, the percentage of the increase from one tax year to the next is not, per se, relevant in the determination of actual value.³³

²⁷ 2014 Reports & Opinions of the Property Tax Administrator, Franklin County, Exhibit 31 - Page 19. The Commission is authorized to take notice of the Reports and Opinions of the Property Tax Administrator as contained in exhibits from Statewide Equalization proceedings.

²⁸ See, for example, Exhibit 3:29, indicating that land in LCG 1D was assessed at \$2,600 per acre in Market Area Two but at \$1,775 per acre in Market Area One. 2014 Reports & Opinions of the Property Tax Administrator, Franklin County, Exhibit 31 - Page 20.

²⁹ See Exhibit 7:1-2.

³⁰ For the parcel in Case No. 14A 051, the assessed value increased from \$84,690 for tax year 2013 to \$147,025 for tax year 2014 (74%). For the parcel in Case No. 14A 052, the increase in assessed value from tax year 2013 to tax year 2014 was from \$78,405 to \$136,035 (84%).

³¹ 350 Neb. Admin. Code, ch. 12 §003.07A(3) (03/09).

³² See 2014 Reports & Opinions of the Property Tax Administrator, Franklin County, Exhibit 31 - Pages 20-21.

³³ 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

Finally, the Taxpayer argued that the 14.49 acres of the Subject Property that were classified and assessed as grassland should have been classified and assessed as wasteland. To qualify as wasteland the use of the land must have “no financial benefit and have not generated any income,” and that “these acres should be wasteland due to the terrain which consists of steep slopes and rough foliage.”³⁴ However, other than the assertion made by DeRiese, no other evidence was offered to support the conclusion that the 14.49 acres could not “be used economically and are not suitable for agricultural or horticultural purposes.”³⁵ The Commission finds there is not persuasive evidence to conclude that the 14.49 acres should be assessed as wasteland.

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 by the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Franklin County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Case No. 14A 051	\$147,025
Case No. 14A 052	\$136,035
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Franklin County Treasurer and the Franklin County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

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).

³⁴ Exhibit 4:1.

³⁵ See 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

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 2014.
7. This Decision and Order is effective for purposes of appeal on August 3, 2015.³⁶

Signed and Sealed: August 3, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁶ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.