

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cattlerack Ranch
Appellant,

v.

Nuckolls County Board of Equalization,
Appellee.

Case No: 14A 038

Decision and Order Affirming
County Board of Equalization

1. A Single Commissioner hearing was held on February 20, 2015, at the Hamilton County Court House, 1111 13th Street Lower Level, Aurora, NE 68818, before Commissioner Salmon.
2. John D. Lange was present at the hearing for Cattlerack Ranch (Taxpayer).
3. John V. Hodge, Special Counsel for the Nuckolls County Board of Equalization was present for the Nuckolls County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an agricultural parcel, with a legal description of: PT W ½ 27-1-8, 305.390 Acres, Nuckolls County, Nebraska.

Background

5. The Nuckolls County Assessor (the Assessor) assessed the Subject Property at \$550,360 for tax year 2014.
6. The Taxpayer protested this value to the Nuckolls County Board and requested an assessed value of \$463,112 for tax year 2014.
7. The Nuckolls County Board determined that the taxable value of the Subject Property was \$548,960 for tax year 2014.
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) (2014 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 Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer alleged that agricultural land in Nuckolls County that is irrigated from a canal should be assessed differently than land irrigated from a well.
16. The Taxpayer disputed the assessed value of 43.5 acres of the Subject Property classified by the County Assessor as irrigated acres. The Taxpayer did not dispute the assessed valuation of the remaining acres of the Subject Property classified as grassland or home site.
17. The Subject Property is located in the Lower Republican River Natural Resources District.
18. The Taxpayer stated that the Subject Property does not have an irrigation well, and that a moratorium on the drilling of any irrigation wells in the Lower Republican River Natural Resources District prevents the Subject Property from having an irrigation well.
19. The 43.5 disputed acres are irrigated with water provided from an irrigation canal operated by the Bostwick Irrigation District.
20. The Taxpayer stated that due to area water restrictions he was not allocated any water from the irrigation canal for the 2014 tax year and that as a result the amount he leased the 43.5 acres went down by approximately half as demonstrated by his 2013 and 2014 lease agreements.
21. The Taxpayer provided the FSA Report of Commodities Farm and Tract Detail Listing for the 2014 program year certifying the protested 43.5 acres as non-irrigated.

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) (2014 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. §77-5018(1) (2014 Cum. Supp.).

22. The Taxpayer presented a list of all agricultural and horticultural land sales in Nuckolls County from tax year 2011 to 2014, along with maps presenting the location of these sales.
23. Both the Taxpayer and the Assessor stated that there were no sales of land irrigated from a canal during the relevant time period.
24. The Assessor stated that without any sales of canal irrigated properties she was unable to determine a different value for canal irrigated versus well irrigated agricultural land in Nuckolls County.
25. The Taxpayer also asserted that the disputed acres of the Subject Property should be valued using the income approach to valuation.
26. That however the only rental rates for property located in Nuckolls County provided at the hearing were the rental rates for the 43.5 disputed acres of the Subject Property for 2013 and 2014.
27. "Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis."⁹
28. The Commission is unable to determine if the rental rates for the Subject Property are representative of the typical rental rates for agricultural and horticultural land in Nuckolls county.
29. The assessment of real property is not an exact science.¹⁰
30. It is possible for reasonable minds to come to diverse opinions of the actual value of real property.¹¹
31. The burden placed on the Taxpayer is not to show that there are reasonable alternative opinions of value for the Subject Property, but to show by clear and convincing evidence that the County Board's determination was unreasonable.¹² Here there are competing reasonable minds, with competing reasonable opinions of value.
32. Therefore, the Commission finds that sufficient evidence does not exist to arrive at an alternative value for the disputed canal irrigated acres of the Subject Property, and that the County Board's determination should be affirmed.
33. The Taxpayer alleged that he was not assessed fairly as compared to the parcel of land located across the road from the subject property.
34. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and

⁹ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

¹⁰ *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

¹¹ *Id.*

¹² *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive.¹³

35. The only Property Record File provided to the Commission was that of the Subject Property.
36. The Commission was not provided with sufficient information to be able to analyze the Taxpayer's equalization claim.
37. 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.
38. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Nuckolls 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:

Land	\$542,055
<u>Improvements</u>	<u>\$ 6,905</u>
Total	\$548,960

3. This Decision and Order, if no further action is taken, shall be certified to the Nuckolls County Treasurer and the Nuckolls County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2014.
7. This Decision and Order is effective on March 3, 2015.

Signed and Sealed: March 3, 2015.

Nancy J. Salmon, Commissioner

¹³ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).