

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald C. Miller,
Appellant,

v.

Merrick County Board of Equalization,
Appellee.

Case No: 14A 039

Decision and Order Affirming Merrick
County Board of Equalization

1. A Single Commissioner hearing was held on February 20, 2015, at Hamilton County Court House, 1111 13th Street Lower Level, Aurora, NE 68818, before Commissioner Salmon.
2. Donald C. Miller (the Taxpayer) was present at the hearing.
3. Lynelle Homolka, Merrick County Attorney, was present for the Merrick County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an unimproved agricultural parcel, with a legal description of: W ½ NW ¼ Less Tax Lot B 64-4CHT CFD, 3-12-07 containing 72.51 acres, Merrick County, Nebraska.

Background

5. The Merrick County Assessor (the Assessor) assessed the Subject Property at \$203,205 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$161,345 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$203,205 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 asserted that the value of the portion of the Subject Property enrolled in the Wetlands Reserve Program (WRP) was so high that he could not make enough from the production of his land used for agricultural or horticultural purposes to afford the taxes. He asserted that he leases the parcel for agricultural or horticultural purposes, but he was unable to secure any lease income from that portion of the parcel enrolled in WRP. He provided the Commission with the 2014 WRP Land study and asserted that not all land enrolled in WRP is the same and that the assessed values should reflect differences in soil types and qualities. He asserted that it was inappropriate to value land enrolled in WRP in Merrick County by looking to market data from land enrolled in WRP in other counties.
16. The Taxpayer asserted that the sold properties were not comparable to the Subject Property. The Taxpayer attempted to draw a distinction between different wetlands based upon the geological formations or characteristics that resulted in the wetlands.

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.).

17. The County Assessor asserted that she had valued all WRP Land at 100% of market value and followed the statutes and guidelines from the Property Tax Administrator. The County Assessor provided her sales roster showing sales of land enrolled in the WRP.
18. The Taxpayer's position can be summarized as assertions that the not every wetland parcel is comparable, and that there can be varying markets for wetlands parcels.
19. The Commission concurs that in theory this is possible. However, the Taxpayer did not provide sufficient evidence to demonstrate that the County Assessor had not made appropriate adjustments to the wetlands sales sufficient to take into account any differences. Further, the Taxpayer did not provide an alternative opinion of value for the portions of the Subject Property enrolled in the WRP.
20. Land enrolled in WRP must be assessed at its actual value and is not considered to be used for agricultural or horticultural purposes.⁹ The County Assessor's values are supported by the sales she provided in evidence.
21. A Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.¹⁰
22. 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.
23. 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 Merrick 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 \$203,205.
3. This Decision and Order, if no further action is taken, shall be certified to the Merrick County Treasurer and the Merrick 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.

⁹ 350 Neb. Admin. ch. 14 §002.06B (03/2009).

¹⁰ *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

7. This Decision and Order is effective on March 4, 2015.

Signed and Sealed: March 4, 2015

Nancy J. Salmon, Commissioner