

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert J. Crouse,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case No: 14SV 003

Decision and Order Reversing Lincoln
County Board of Equalization

1. A Single Commissioner hearing was held on May 20, 2015, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. Robert J. Crouse (the Taxpayer) was present at the hearing.
3. Mr. Joe Wright, Deputy Lincoln County Attorney, was present for the Lincoln County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an unimproved parcel, with a legal description of: Pt Gov't Lot 4 (Inside) & Accr 6-12-28, Lincoln County, Nebraska.

Background

5. The Lincoln County Assessor (the Assessor) determined that the Subject Property did not qualify for special valuation for tax year 2014.
6. The Taxpayer protested this determination to the Lincoln County Board of Equalization (County Board) and requested special valuation for tax year 2014.
7. The County Board determined that the Subject Property did not qualify for special valuation 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
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

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).

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. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁷
14. The Taxpayer asserted that his only concern was the classification of the Subject Property. He asserted that the Subject Property is only used for agricultural or horticultural purposes. He testified that he grows native grasses on the Subject Property, which he cuts, bails, and sells. Depending upon the year, he gets at least two cuttings of hay.
15. The Taxpayer testified that he does not fish, hunt or lease the Subject Property for hunting or fishing, that there are no buildings on the parcel and he has no intent to build on the parcel, and that the only other feature on the Subject Property is a pond.
16. Julie Stenger, Lincoln County Assessor, stated that special valuation in Lincoln County is only granted on parcels close to North Platte or parcels classified as recreation. It is their opinion that the Subject Parcel is a residential parcel and does not meet the requirements of special valuation.
17. Nebraska Statute requires taxing entities to assess agricultural or horticultural land with an actual value that reflects purposes or uses other than agricultural and horticultural uses at its special valuation once the owner of the parcel meets specific criteria.⁸ The owner is required to file an application for special valuation with the County Assessor, the agricultural and horticultural land must be located outside of corporate boundaries or part of a conservation or preservation easement, and the parcel must actually be agricultural or horticultural land.⁹
18. The only issue in dispute is whether the Subject Property is agricultural or horticultural land.
19. Nebraska Statute defines agricultural 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) (2014 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁸ See, Neb. Rev. Stat. §77-1344(1) (Reissue 2009).

⁹ See, Neb. Rev. Stat. §77-1344(2) (Reissue 2009).

Agricultural land and horticultural land means 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, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land[.]¹⁰

20. Nebraska Statute also defines agricultural or horticultural purposes:

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. Agricultural or horticultural purposes includes the following uses of land[.]¹¹

21. According to Nebraska Statutes it is the current use and not the intended, potential, or highest and best use of a parcel that controls whether the parcel should be classified as agricultural and horticultural land.¹² The unrefuted evidence before the Commission is that the only current use of the Subject Property is for the commercial production and sale of native grass hay.
22. The commercial production and sale of native grass hay is an agricultural or horticultural use and the use of the Subject Property for that purposes is a use for an agricultural or horticultural purpose.
23. The Commission finds that the Subject Property is used entirely for an agricultural or horticultural purpose and constitutes agricultural and horticultural land.
24. The County Assessor's testimony indicates that the Subject Property's actual value is impacted by its highest and best use as a residential parcel. However, the Taxpayer filed an application for special valuation. The Nebraska legal principle of special valuation acknowledges that some parcels of agricultural and horticultural land have an actual value, based upon the highest and best use of the Subject Property, which exceeds the value of the Subject Property as used for agricultural or horticultural purposes. Nebraska law is clear that when this is the case, and the owner has met all criteria, the Subject Property should be assessed at its value as used for agricultural or horticultural purposes, and not at its actual value based upon its highest and best use.¹³
25. The Commission finds that the Subject Property should receive special valuation.
26. 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.
27. 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.

¹⁰ Neb. Rev. Stat. §77-1359(1) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-1359(2) (2014 Cum. Supp.).

¹² See, Neb. Rev. Stat. §77-1359 (2014 Cum. Supp.).

¹³ See, Neb. Rev. Stat. §77-1344 (Reissue 2009).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Lincoln County Board of Equalization rejecting the application for special valuation is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2014 is its special valuation for that year.
3. This Decision and Order does not limit the ability of the Taxpayer to protest the special valuation of th Subject Property once assessed.
4. This Decision and Order, if no further action is taken, shall be certified to the Lincoln County Treasurer and the Lincoln County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
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 2014.
8. This Decision and Order is effective on May 27, 2015.

Signed and Sealed: May 27, 2015

Nancy J. Salmon, Commissioner