

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dean A. Fedde,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 15A 0085

Decision and Order Reversing
the Decision of the Saunders
County Board of Equalization

Background

1. The Subject Property is a 60.01 acre agricultural parcel located in Saunders County, Nebraska. The legal description is found in the Case File.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$330,490 for tax year 2015.
3. The Taxpayer protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$311,447 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$330,490 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 8, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Dean A. Fedde (the Taxpayer) was present at the hearing.
8. Steven J. Twohig, the Saunders County Attorney, was present for the County Board.
9. Kyle Morgan, an appraiser for the County Assessor, was also present.
10. At the hearing, the Commission ordered that the County Assessor conduct a physical inspection of the property and submit the results of that inspection to the Commission by April 8, 2016.

Applicable Law

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
12. The Commission’s review of the determination of the County Board of Equalization is de novo.²

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

² 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

13. 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
14. 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
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
16. 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
17. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

18. At the hearing, the Taxpayer asserted that 3.2 acres of his 60.01 acre parcel should be classified as wasteland.⁹ The 3.2 acres consist of a drainage ditch that is several feet deep and has over 800 acres draining through it. The 3.2 acres was classified as non-cropland for tax years 2012 through 2014 by the United States Department of Agriculture Farm Service Agency (FSA).

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).

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.).

⁹ Wasteland includes “land that cannot be used economically and are [sic] 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. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts, which are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification.” 350 NAC Chapter 14, §002.54.

19. For the 2015 tax year, the County Assessor reclassified the drainage ditch as grassland.¹⁰
20. After the hearing, and after a physical inspection of the Subject Property by Kyle Morgan, the County Assessor determined that .35 acres should be classified as timberland¹¹ and that 3.0 acres should be classified as grassland. The Taxpayer did not dispute the timberland designation for the .35 acres, and that classification appears to be appropriate.
21. However, the Taxpayer disputes the classification of the 3.0 acres of drainage ditch as grassland.
22. The County asserts that the 3.0 acres of drainage ditch should be considered a “drainage way,” as defined in Rules and Regulations.¹² We disagree.
23. After our review of the information provided by the County Board and the Taxpayer, we find that the 3.0 acres should be classified as wasteland because the record persuasively indicates that the land cannot be used economically and is not suitable for agricultural or horticultural purposes.
24. We therefore conclude that the 3.0 acres should have been classified as wasteland and assessed at \$110 per acre.
25. Therefore, the Commission finds that it is necessary to remove the grassland acre counts for soil types 7750 and 7049 and to classify 3.0 acres from the same soil types as wasteland. This determination produces a taxable value of the Subject Property of \$313,000.¹³
26. The Taxpayer has produced competent evidence to rebut the presumption in favor of the taxable value determination made by the County Board.
27. The Taxpayer has adduced clear and convincing evidence that the taxable value determination made by the County Board is arbitrary or unreasonable.
28. The decision of the County Board should be vacated and reversed.

¹⁰ “Grassland is the state and condition of the range based on what it is naturally capable of producing. Grassland includes all types of grasses, permanent bromegrass, other introduced grasses, and native grasses used for grazing or mowed for hay. In many instances it is not possible to identify permanent bromegrass from temporary bromegrass that is grown as part of the crop rotation. For this reason, all of the present bromegrass should be classified as grassland until the area is returned to cultivation. There may be situations where an alfalfa and grass mixture is grown in rotation with cropland or is harvested for hay. These areas can be classified as cropland but their market value may be more representative of grassland. Areas of wooded grazing land are classified as grassland not timberland or wasteland. When there are significant areas of trees or timber on a parcel, and it can no longer be grazed, consideration needs to be given to placing the affected acres in the forestland and timberland category.” 350 NAC Chapter 14, §002.31.

¹¹ 002.29 Timberland and Forestland is land which is wooded by nature or humans and consisting of a dense growth of trees and underbrush such that it is not suitable for grazing. 350 NAC Chapter 14, §002.29.

¹² “Intermittent small drainage ways, with or without small channels, should be included with the surrounding land. They usually carry runoff only after rains.” 350 NAC Chapter 14, §005.01D(1).

¹³ (1.67 acres of soil type 7646, LCG 4D1, at \$3,677 = \$6,141) + (4.05 acres of soil type 7230, LCG 1D1, at \$5,990 = \$24,260) + (0.19 acres of soil type 7268, LCG 3D1, at \$4,960 = 942) + (1.6 acres of soil type 7750, LCG 2D1, at \$5,539 = \$8,862) + (43.58 acres of soil type 7049, LCG 2D1, at \$5,540 = \$241,433) + (5.57 acres of soil type 7647, LCG 2D1, at \$5,539 = \$30,852) + (3.0 acres of waste at \$110 = \$330) + (0.28 acres of soil type 7646, LCG 4G1T2, at \$500 = \$140) + (0.07 acres of soil type 7268, LCG 3G1T2, at \$571 = \$40) = \$313,000

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is \$313,000.
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders 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 2015.
7. This Decision and Order is effective on April 20, 2016.

Signed and Sealed: April 20, 2016

Robert W. Hotz, Commissioner