

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James L. and Wilma J. Skala Revocable
Trust, Wilma J. Skala, Trustee,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 15A 0063

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a 156.72 acre tract with a legal description of: SW1/4 of 18-10-13, Buffalo County, Nebraska.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$468,330 for tax year 2015.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$360,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$468,330 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 August 3, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J. Salmon.
7. Wilma J. Skala, Trustee, was present at the hearing for the Taxpayer.
8. Andrew Hoffmeister, Deputy Buffalo County Attorney, was present for the County Board. Also appearing on behalf of the Board was Joe Barber, Buffalo County Assessor.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
11. 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. §77-1301(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 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).

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

12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that her property was overvalued due to the existence of a Natural Resources District dam situated on her property. She stated that because of the presence of the dam, she is required to use four different pivot irrigation systems to irrigate 84.71 acres of his land. She opined that the valuation of her property should be discounted because of this unusual circumstance. She also indicated that there were no comparable sales available with similar circumstances.
17. The County Assessor stated that he has assessed 71.72 acres of the tract as irrigated land. He did so utilizing the market (sales comparison) approach. Actual value is defined by Nebraska Statute as:
[T]he market value of real property in the ordinary course of trade. 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. Actual 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 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 consideration of the

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(9) (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.).

full description of the physical characteristics of the real property and an identification of the property rights being valued.⁹

18. Valuation of agricultural and horticultural land is also addressed in the Nebraska Department of Revenue Regulations. See, Title 350, N.A.C. Chap. 14, §006. The regulations state that both a market (sales comparison) approach or an income approach may be used to determine actual value of agricultural or horticultural land, but “Reconciliation of final value is based on the appropriateness of the approach to value **(market value is preferred in the valuation of agricultural land)** and the availability and reliability of the information used in each approach.¹⁰
19. The Commission finds that the sales and market approach best determines actual value of the Subject Property. The Taxpayer did not provide documentation to quantify the differences between properties such as hers and other irrigated land within the county. The Commission is unable to provide relief without some quantifiable evidence.
20. The Agricultural Land and Horticultural Land Regulations define irrigated cropland as including “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”¹¹
21. The Commission finds that the Taxpayer has not presented competent evidence to rebut the presumption of correctness of the County Board with respect to this issue.
22. Lastly, the Taxpayer also expressed concern that the County Assessor determined that she has 71.72 acres that are irrigated whereas the Taxpayer actually irrigates 84.71 acres. The Taxpayer would prefer to have the irrigated acreage increased, but the value be discounted as described above. The County Assessor indicated that the irrigated acreage could be considered for the 2017 assessment process. The Commission is unable to address that issue at the present time
23. The Commission finds that the Taxpayer has not presented competent evidence to rebut the presumption existing in favor of the County Board with respect to the issue of equalization.
24. 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.
25. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁰ 350 Neb. Admin. Code, Chap 14, §006.03 (Emphasis added).

¹¹ 350 Neb. Admin. Code, Chap 14, §002.21B.

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$468,330
<u>Improvements</u>	<u>\$ 0</u>
 Total	 \$468,330

3. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo 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 August 8, 2016.

Signed and Sealed: August 8, 2016

Nancy J. Salmon, Commissioner