

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Charles and Elizabeth Orton,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case No: 15A 0012

Decision and Order Affirming Madison
County Board of Equalization

Background

1. The Subject Property is an unimproved agricultural parcel, with a legal description of: Pt NE ¼ 24-23-3, 146.51 acres, Madison County, Nebraska.
2. The Madison County Assessor (the County Assessor) assessed the Subject Property at \$500,560 for tax year 2015.
3. The Taxpayer protested this value to the Madison County Board of Equalization (the County Board) and requested an assessed value of \$336,440 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$500,560 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 June 27, 2016, at the Ramada Inn Conference Center, Columbus, Nebraska, before Commissioner Nancy J. Salmon.
7. Charles and Elizabeth Orton were present at the hearing for Taxpayers.
8. Jeff Hackerott, Madison County Assessor, was present for the County Board.

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 sufficient competent evidence to justify its action.”³ That presumption “remains until

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).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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. In their initial argument, the Taxpayers assert that the Assessor’s valuation of the Subject Property was performed inappropriately. They assert that the Assessor’s three year sales procedure (discussed below) is not equitable. It is their contention that poor quality agricultural land is overvalued which in effect subsidizes higher quality land valuations.
17. The Taxpayers provided the Commission with four allegedly comparable sales. Two of the sales were from Madison County and two were from adjoining Pierce County. The Taxpayers contend that the four sales are comparable to the Subject Property and conclude that assessed value of the Subject Property would be \$323,535, after application of a special valuation rate of 71%.
18. In response to the Taxpayers’ comparable sales, the County Assessor explained that he only uses sales from Madison County to arrive at agricultural values in Madison County. He does not verify sales from adjoining counties as it is difficult to determine whether such sales are arm’s length sales. The Assessor also noted that he uses a three year sales window of agricultural sales. For 2015, the window utilized was from October 1, 2011 through September 30, 2014. Two of the four sales provided by the Taxpayers were outside that window. The Assessor also explained that, like virtually all assessors, he utilizes a mass appraisal method and does not value each parcel separately.

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.).

19. Based upon the information provided, the Commission finds that the comparable sales submitted by the Taxpayers are not sufficient to overcome the presumption referred to in paragraph 11 above.
20. The Taxpayers also assert that the Subject Property should be valued under the Income Approach rather than the Market or Sales 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 full description of the physical characteristics of the real property and an identification of the property rights being valued.⁹
21. 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
22. In their argument, the Taxpayers provided some information regarding their lease of dryland agricultural land, but did not provide the Commission with market rent, expenses, and a capitalization rate.
23. The Commission finds that, in this instance, the sales and market approach best determines actual value of the Subject Property.
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).

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	\$500,560
<u>Improvements</u>	<u>\$ 0</u>
Total	\$500,560

3. This Decision and Order, if no further action is taken, shall be certified to the Madison County Treasurer and the Madison 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 July 1, 2016.

Signed and Sealed: July 1, 2016.

Nancy J. Salmon, Commissioner