

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Edward A. Haack,
Appellant,

v.

Morrill County Board of Equalization,
Appellee.

Case No: 15A 0067

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel, with a legal description of: Pt. SE (S of RR) 80 Aces Accretion 20-19-48 containing 158.89 acres, Morrill County, Nebraska (the “Subject Property”).
2. The Morrill County Assessor (the “County Assessor”) assessed the Subject Property at \$673,640 for tax year 2015.
3. The Taxpayer protested this value to the Morrill County Board of Equalization (the “County Board”) and requested an assessed value of \$434,751 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$629,130 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 July 21, 2016, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J. Salmon.
7. Edward A. and Laurie Haack were present at the hearing on behalf of themselves (the “Taxpayers”).
8. Larry Baumann, attorney, was present at the hearing on behalf of the Taxpayers.
9. Travis Rodak, Morrill County Attorney, was present for the County Board.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. 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 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).

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

Findings of Fact & Conclusions of Law

17. The sole issue before the Commission in this case involves the valuation of the portion of the Taxpayers’ land which is enrolled in the federal government’s Wetland Reserve Program (“WRP”). The Taxpayers contend that, because the land in question, is leased for a portion of the year for grazing, such land must be classified as agricultural and valued as grassland. The County Board accepted the County Assessor’s recommendation that such land be valued as Recreational land.
18. The submitted evidence indicates that the Taxpayers own 80.89 acres of accretion land, of which approximately 64 acres is enrolled in the government Wetland Reserve Program. As a part of that program, the Taxpayers conveyed an easement to the United States which generally encumbers their property. The easement specifically restricts the uses a landowner may have with respect to his or her property. However, he or she is allowed to graze the property if the government grants them permission to do so. With regard to grazing, the submitted information indicates that the Taxpayers leased grazing rights for the year 2014 for 45 days (35 cow/calf pairs) and for 2015 for 37 days (57

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.).

cow/calf pairs). The submitted information indicates that the Taxpayers do not lease their land to others for hunting or fishing purposes, but the Taxpayers do have a blind for personal hunting.

19. If the Subject Property is “agricultural land and horticultural land” it must be valued for purposes of taxation at 75% of its actual value. Neb. Rev. Stat. §77-201(2) (Reissue 2009). Otherwise, if the subject property is not “agricultural land and horticultural land” it is valued at 100% of its actual value. The statute defining agricultural land and horticultural land reads as follows:

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. (Emphasis added).⁹

In sum, land cannot be classified as “agricultural land and horticultural land” unless it is “primarily used” for “agricultural or horticultural purposes.” The Commission finds that the grazing of land for a period as short as 37 days does not constitute utilizing the land **primarily** for agricultural purposes.

In addition to the foregoing reasoning, the Commission finds that classification of WRP land as agricultural land would be in violation of Title 350, Nebraska Department of Revenue Regulations. The applicable regulation provides that “Land encumbered by an easement under the Wetlands Reserve Program cannot be used for agricultural or horticultural purposes and therefore cannot be characterized as agricultural or horticultural land and must be valued at its actual value.”¹⁰

The Commission recognizes that while some grazing of the WRP land may be permitted, such activity does not result in a determination that the land can be valued as agricultural or horticultural land.

20. 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.
21. 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:

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:

⁹ Neb. Rev. Stat. §77-1359 (Reissue 2012).

¹⁰ Neb. Admin. Code, Title 350, §002.08B

Land	\$269,210
<u>Improvements</u>	<u>\$359,920</u>
Total	\$629,130

3. This Decision and Order, if no further action is taken, shall be certified to the Morrill County Treasurer and the Morrill 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 26, 2016.

Signed and Sealed: July 26, 2016

Nancy J. Salmon, Commissioner