

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John C.Gable Living Trust, John C. Gable,
Trustee,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 14A 040

Decision and Order Reversing Scotts Bluff
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel improved with a 1,216 square foot manufactured home, with a legal description of: Pt. SW ¼ 34-23-54 cont. 184.5 acres, Scotts Bluff County, Nebraska.
2. The Scotts Bluff County Assessor (the County Assessor) assessed the Subject Property at \$331,961 for tax year 2014.
3. The Taxpayer protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$260,301 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$331,961 for tax year 2014.
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 1, 2016, at the Hampton Inn, 200 Platte Oasis Pkwy, North Platte, Nebraska, before Nancy J. Salmon.
7. John C. Gable was present at the hearing for the Taxpayer.
8. Amy Ramos, Scotts Bluff 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

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 argues that the County Board accepted incorrect soil classifications on the Subject Property. Specifically, he asserts that the County Assessor’s use of the Natural Resource Conservation Service’s soil types is inappropriate. However, he did not present authoritative information to support this contention. Mr. Gable did provide documentation of a soil survey completed by Midwest Laboratories in August, 2014. A Soil Texture Report prepared by Midwest Laboratories was submitted by the Taxpayer. In addition, a handdrawn map was provided indicating the approximate location of the six soil samples taken by Midwest. The Taxpayer was granted thirty days to provide a new NCRS map to support his position. Although the Taxpayer did provide an additional submission (received by the Commission on June 9, 2016), the submission did not include a new NCRS map. The newly submitted information includes the same colorized USDA Web Soil survey provided by the County Assessor at the hearing, but now includes what appear to be the Taxpayer’s handwritten notes. The notes apparently refer to the soil test sample sites taken by Midwest Laboratories as well other information, the origin of which the Commission is unable to ascertain. The Taxpayer also submitted a

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.).

duplicate of the Midwest Laboratories Soil Texture Report which also contains handwritten notes, apparently authored by the Taxpayer.

17. Although the submitted documentation purports to compare the NRCS survey to the actual field sample soil tests taken by Midwest Laboratories, the Commission is unable to determine the soil types using the submitted documentation. The Soil Texture Report indicates the content of soil samples, but does not address the soil types. The newly submitted Report does indicate the soil types, but the origin of such classification is unknown. As such, it has limited value to the Commission. The Taxpayer's conclusion that each of the soil samples taken demonstrated 3A soil types is not supported by the evidence as the Report does not explain this conclusion. Neither does it quantify the number of acres that would be changed if the Report were accepted. Title 350 NAC, Chapter 14 §004.06 requires that for purposes of classification of agricultural land, there be a set of complete and accurate maps and digital imageries that reflect the location, identification, and inventory of all parcels of land within every jurisdiction. The general procedures require that counties have their soils classified by parcel, soil, and land use. The Commission finds that the NRCS soil analyses meet these criteria. The Commission is unaware of more recent soil surveys or more recent technical updates as contemplated by Title 350, NAC, Chapter 14, §004.08. The Taxpayer has not presented sufficient evidence to rebut the County Assessor's Land Capability Groups. It is unclear how the Taxpayer determined that 3A Land Capability Groups should be utilized instead of the LCGs contained on the Property Record Card. The Commission finds that the Taxpayer has not met his burden of persuasion with respect to such classifications.
18. The Taxpayer contends that an approximately fifty foot wide ditch running for one half mile on the Subject Property (consisting of approximately 3.03 acres) constitutes wasteland. He also asserts that a private road running along both sides of the ditch should be categorized as wasteland.
19. Wasteland includes land that cannot be used economically and is not suitable for agricultural or horticultural purposes. Such land types include, inter alia, large deep gullies. 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.⁹ While "intermittent small drainage ways, with or without small channels" are to be included in the surrounding land,¹⁰ the ditch in the Subject Property is quite large and appears to run in an uninterrupted fashion. As such, the Commission finds that it constitutes wasteland. The adjoining roads, however, benefit the land and are not wasteland. 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 with respect to this issue. The Commission finds that the 3.03 acre ditch should be categorized as wasteland.

⁹ See Title 350, NAC, Chapter 14 §002.54

¹⁰ See Title 350, NAC, Chapter 14 §005.01D(1)

20. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient evidence. The Taxpayer asserts that 7.5 acres of the Subject Property located in the northeast corner should have been classified as dryland rather than irrigated. The County Assessor agreed with such position and stipulated on behalf of the County Board that the area was not irrigated. 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 with respect to such issue.
21. In addition, the County Assessor agreed that the Subject Property contained only 126.13 acres of irrigated land, not 139.2 acres as previously reported. Based upon that acknowledgment, the acreage and valuation breakdown of the Subject Property includes the following: total irrigated 126.13 acres, value \$279,838; total dryland 7.5 acres, value \$2,100; total grassland 44.44 acres, value \$11,612; total wasteland 5.43 acres, value \$407; and 1.0 acre homesite, land value \$13,500. In conclusion, the Commission finds that the value of the 184.50 acre Subject Property is \$307,457. The following spreadsheet itemizes the Commission's findings:

| | Soil | LVG | Acres | Assessed Value per Acr | 2015 Assessed Value |
|--------------------|--------------|------------|---------------|------------------------|---------------------|
| Irrig | 1712 | 2A | 6.40 | 2380 | 15,232 |
| | 5662 | 4A1 | 0.56 | 1450 | 812 |
| | 5675 | 4A1 | 3.00 | 1450 | 4,350 |
| | 5834 | 2A1 | 83.40 | 2380 | 198,492 |
| | 5835 | 3A1 | 23.27 | 1860 | 43,282 |
| | 5837 | 3A1 | 9.50 | 1860 | 17,670 |
| Total Irrig | | | 126.13 | | 279,838 |
| Dry | 6201 | 4D | 7.50 | 280 | 2,100 |
| Grass | 1180 | 3G | 1.50 | 260 | 390 |
| | 1301 | 3G | 3.00 | 260 | 780 |
| | 1700 | 3G | 6.20 | 260 | 1,612 |
| | 1712 | 2G | 3.67 | 270 | 991 |
| | 5662 | 4G1 | 4.30 | 260 | 1,118 |
| | 5675 | 4G1 | 23.67 | 260 | 6,154 |
| Total Grass | | | 44.44 | | 11,612 |
| Waste | Waste | 600 | 5.43 | 75 | 407 |

Homesite Homesite 800 1.00 13,500 13,500

2015 Assessed land Value 307,457

22. The Taxpayer has 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 vacated.

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 2014, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

| | |
|---------------------|------------------|
| Land | \$307,457 |
| <u>Improvements</u> | <u>\$ 16,300</u> |
| Total | \$323,757 |

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 2014.
7. This Decision and Order is effective on June 21, 2016

Signed and Sealed: June 21, 2016.

Nancy J. Salmon, Commissioner