

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James A. Widtfeldt,
Appellant,

v.

Holt County Board of Equalization,
Appellee.

Case Nos: 14A 100, 14A 101, 14A 102, 14A 103, 14A 104, 14A 105, 14A 106, 14A 107, 14A 108, 14A 109, 14A 110, 14A 111, 14A 112, 14A 113, 14A 114, 14A 115, 14A 116, 14A 117, 14A 133, 14A 134, 14A 135, 14A 136, 14A 137, & 14R 187

Decision and Order Affirming the Decisions
of the Holt County Board of Equalization

For the Appellant:
James A. Widtfeldt,
Pro Se

For the Appellee:
Brent Kelly, Holt County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of 23 distinct agricultural and horticultural parcels and one residential parcel located in Holt County, Nebraska. The legal description of the Subject Property is found at Exhibits 1-24. The property record card for the Subject Property is found at Exhibits 25-48.

II. PROCEDURAL HISTORY

The County Assessor determined that the assessed value of the Subject Property in 14A 100 was \$118,350 for tax year 2014.¹ The Taxpayer protested this assessment to the Holt County Board of Equalization (the County Board) and requested an assessed valuation of \$59,175.² The County Board determined that the taxable value for tax year 2014 was \$118,350.³

¹ Exhibit 1.

² Exhibit 1. In each of the 24 protests, the Taxpayer requested that the taxable value of the parcel be 50% of the assessed value.

³ Exhibit 1.

The County Assessor determined that the assessed value of the Subject Property in 14A 101 was \$110,200 for tax year 2014.⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$55,100.⁵ The County Board determined that the taxable value for tax year 2014 was \$110,200.⁶

The County Assessor determined that the assessed value of the Subject Property in 14A 102 was \$634,120 for tax year 2014.⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$317,060.⁸ The County Board determined that the taxable value for tax year 2014 was \$634,120.⁹

The County Assessor determined that the assessed value of the Subject Property in 14A 103 was \$462,005 for tax year 2014.¹⁰ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$231,002.¹¹ The County Board determined that the taxable value for tax year 2014 was \$462,005.¹²

The County Assessor determined that the assessed value of the Subject Property in 14A 104 was \$234,025 for tax year 2014.¹³ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$117,012.¹⁴ The County Board determined that the taxable value for tax year 2014 was \$234,025.¹⁵

The County Assessor determined that the assessed value of the Subject Property in 14A 105 was \$476,180 for tax year 2014.¹⁶ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$238,090.¹⁷ The County Board determined that the taxable value for tax year 2014 was \$476,180.¹⁸

The County Assessor determined that the assessed value of the Subject Property in 14A 106 was \$202,170 for tax year 2014.¹⁹ The Taxpayer protested this assessment to the County Board

⁴ Exhibit 2.

⁵ Exhibit 2.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibit 3.

⁹ Exhibit 3.

¹⁰ Exhibit 4.

¹¹ Exhibit 4.

¹² Exhibit 4.

¹³ Exhibit 5.

¹⁴ Exhibit 5.

¹⁵ Exhibit 5.

¹⁶ Exhibit 6.

¹⁷ Exhibit 6.

¹⁸ Exhibit 6.

¹⁹ Exhibit 7.

and requested an assessed valuation of \$101,060.²⁰ The County Board determined that the taxable value for tax year 2014 was \$202,170.²¹

The County Assessor determined that the assessed value of the Subject Property in 14A 107 was \$215,210 for tax year 2014.²² The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$107,605.²³ The County Board determined that the taxable value for tax year 2014 was \$215,210.²⁴

The County Assessor determined that the assessed value of the Subject Property in 14A 108 was \$217,855 for tax year 2014.²⁵ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$108,925.²⁶ The County Board determined that the taxable value for tax year 2014 was \$217,855.²⁷

The County Assessor determined that the assessed value of the Subject Property in 14A 109 was \$40,735 for tax year 2014.²⁸ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$20,367.²⁹ The County Board determined that the taxable value for tax year 2014 was \$40,735.³⁰

The County Assessor determined that the assessed value of the Subject Property in 14A 110 was \$259,345 for tax year 2014.³¹ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$129,672.³² The County Board determined that the taxable value for tax year 2014 was \$259,345.³³

The County Assessor determined that the assessed value of the Subject Property in 14A 111 was \$314,420 for tax year 2014.³⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$157,210.³⁵ The County Board determined that the taxable value for tax year 2014 was \$314,420.³⁶

²⁰ Exhibit 7.

²¹ Exhibit 7.

²² Exhibit 8.

²³ Exhibit 8.

²⁴ Exhibit 8.

²⁵ Exhibit 9.

²⁶ Exhibit 9.

²⁷ Exhibit 9.

²⁸ Exhibit 10.

²⁹ Exhibit 10.

³⁰ Exhibit 10.

³¹ Exhibit 11.

³² Exhibit 11.

³³ Exhibit 11.

³⁴ Exhibit 12.

³⁵ Exhibit 12.

³⁶ Exhibit 12.

The County Assessor determined that the assessed value of the Subject Property in 14A 112 was \$31,940 for tax year 2014.³⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$15,970.³⁸ The County Board determined that the taxable value for tax year 2014 was \$31,940.³⁹

The County Assessor determined that the assessed value of the Subject Property in 14A 113 was \$454,980 for tax year 2014.⁴⁰ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$227,490.⁴¹ The County Board determined that the taxable value for tax year 2014 was \$454,980.⁴²

The County Assessor determined that the assessed value of the Subject Property in 14A 114 was \$90,680 for tax year 2014.⁴³ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$45,340.⁴⁴ The County Board determined that the taxable value for tax year 2014 was \$90,680.⁴⁵

The County Assessor determined that the assessed value of the Subject Property in 14A 115 was \$394,485 for tax year 2014.⁴⁶ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$197,355.⁴⁷ The County Board determined that the taxable value for tax year 2014 was \$394,485.⁴⁸

The County Assessor determined that the assessed value of the Subject Property in 14A 116 was \$63,500 for tax year 2014.⁴⁹ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$31,750.⁵⁰ The County Board determined that the taxable value for tax year 2014 was \$63,500.⁵¹

The County Assessor determined that the assessed value of the Subject Property in 14A 117 was \$417,270 for tax year 2014.⁵² The Taxpayer protested this assessment to the County Board

³⁷ Exhibit 13.

³⁸ Exhibit 13.

³⁹ Exhibit 13.

⁴⁰ Exhibit 14.

⁴¹ Exhibit 14.

⁴² Exhibit 14.

⁴³ Exhibit 15.

⁴⁴ Exhibit 15.

⁴⁵ Exhibit 15.

⁴⁶ Exhibit 16.

⁴⁷ Exhibit 16.

⁴⁸ Exhibit 16.

⁴⁹ Exhibit 17.

⁵⁰ Exhibit 17.

⁵¹ Exhibit 17.

⁵² Exhibit 18.

and requested an assessed valuation of \$208,635.⁵³ The County Board determined that the taxable value for tax year 2014 was \$417,270.⁵⁴

The County Assessor determined that the assessed value of the Subject Property in 14A 133 was \$297,480 for tax year 2014.⁵⁵ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$148,740.⁵⁶ The County Board determined that the taxable value for tax year 2014 was \$297,480.⁵⁷

The County Assessor determined that the assessed value of the Subject Property in 14A 134 was \$158,500 for tax year 2014.⁵⁸ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$70,250.⁵⁹ The County Board determined that the taxable value for tax year 2014 was \$158,500.⁶⁰

The County Assessor determined that the assessed value of the Subject Property in 14A 135 was \$332,560 for tax year 2014.⁶¹ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$166,280.⁶² The County Board determined that the taxable value for tax year 2014 was \$332,560.⁶³

The County Assessor determined that the assessed value of the Subject Property in 14A 136 was \$292,530 for tax year 2014.⁶⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$146,265.⁶⁵ The County Board determined that the taxable value for tax year 2014 was \$292,530.⁶⁶

The County Assessor determined that the assessed value of the Subject Property in 14A 137 was \$400,370 for tax year 2014.⁶⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$200,185.⁶⁸ The County Board determined that the taxable value for tax year 2014 was \$400,370.⁶⁹

⁵³ Exhibit 18.

⁵⁴ Exhibit 18.

⁵⁵ Exhibit 19.

⁵⁶ Exhibit 19.

⁵⁷ Exhibit 19.

⁵⁸ Exhibit 20.

⁵⁹ Exhibit 20.

⁶⁰ Exhibit 20.

⁶¹ Exhibit 21.

⁶² Exhibit 21.

⁶³ Exhibit 21.

⁶⁴ Exhibit 22.

⁶⁵ Exhibit 22.

⁶⁶ Exhibit 22.

⁶⁷ Exhibit 23.

⁶⁸ Exhibit 23.

⁶⁹ Exhibit 23.

The County Assessor determined that the assessed value of the Subject Property in 14R 187 was \$10,450 for tax year 2014.⁷⁰ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$5,230.⁷¹ The County Board determined that the taxable value for tax year 2014 was \$10,450.⁷²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. The Commission held a hearing on June 15, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁷³ When the Commission considers an appeal of a decision of a County Board of Equalization, 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."⁷⁴

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.⁷⁵

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.⁷⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷⁷

⁷⁰ Exhibit 24.

⁷¹ Exhibit 24.

⁷² Exhibit 24.

⁷³ 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).

⁷⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷⁵ *Id.*

⁷⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷⁸ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁷⁹

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁸⁰ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”⁸¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸²

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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 a 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 full description of the physical characteristics of the real property and an identification of the property rights valued.⁸³

“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.”⁸⁴ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”⁸⁵ Taxable value is the

⁷⁸ 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).

⁷⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁸⁰ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁸¹ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

⁸² Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁸³ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁸⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁸⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.⁸⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁸⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁸⁸

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). Agricultural land and horticultural land means a parcel of land 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. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.⁸⁹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”⁹⁰

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.

B. Summary of the Evidence

The Taxpayer asserted that the actual value of the Subject Properties was adversely affected by numerous actions taken by State and Federal governmental agencies over a period of many years. These actions included an action brought by the Nebraska Equal Opportunity Commission, actions taken by the Internal Revenue Service, and actions by the Federal Reserve Board in setting Treasury Rates. The Taxpayer provided no evidence to quantify any alleged effects of these actions on the actual values of any of the Subject Properties for tax year 2014.

James Widtfeldt testified that he was not aware of any errors regarding acre totals or soil type designations in the property record cards for any of the Subject Properties.⁹¹ He offered no relevant evidence disputing the value per acre of the assessment of the Subject Properties. He also asserted that tax sales should be considered when valuing property.

⁸⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁸⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

⁸⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

⁸⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

⁹⁰ Neb. Rev. Stat. §77-132 (Reissue 2009).

⁹¹ Exhibits 1-24.

Timothy Wallinger, the Holt County Assessor, testified that he based the assessment of the Subject Properties on comparable sales in Holt County. He said that soil types were determined by the Natural Resources Conservation Service and those soil types were inputted into a Geographic Information System to assist in determining values. He testified that aerial photographs were updated every two years and each property in the county was reappraised at least once every six years.

Wallinger testified that he did not consider Federal Reserve Rates, tax sales, or farm payments when assessing property. Instead he evaluated sales prices of comparable properties to determine values.

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the determinations of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Holt County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 are affirmed in Case Nos: 14A 101, 14A 102, 14A 103, 14A 104, 14A 105, 14A 106, 14A 107, 14A 108, 14A 109, 14A 110, 14A 111, 14A 112, 14A 113, 14A 114, 14A 115, 14A 116, 14A 117, 14A 133, 14A 134, 14A 135, 14A 136, 14A 137, 14R 187.
2. The taxable values of the Subject Property for tax year 2014 are:

14A 100	\$118,350
14A 101	\$110,200
14A 102	\$634,120
14A 103	\$462,005
14A 104	\$234,025

14A 105 \$476,180
14A 106 \$202,170
14A 107 \$215,210
14A 108 \$217,855
14A 109 \$ 40,735
14A 110 \$259,345
14A 111 \$314,420
14A 112 \$ 31,940
14A 113 \$454,980
14A 114 \$ 90,680
14A 115 \$394,485
14A 116 \$ 63,500
14A 117 \$417,270
14A 133 \$297,480
14A 134 \$158,500
14A 135 \$332,560
14A 136 \$292,530
14A 137 \$400,370
14R 187 \$ 10,450

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Holt County Treasurer and the Holt 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 for purposes of appeal on June 21, 2016.

Signed and Sealed: June 21, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019.