

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Huse Revocable Trust, John J. Huse,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 15A 0122

Decision and Order Affirming Dakota
County Board of Equalization

Background

1. The Subject Property is an unimproved agricultural parcel, with a legal description of: All that part of the N ½ of sec 1-28-7, further described as the N ½ NE ¼ & the NE ¼ of the NW ¼ & the N 293.59’ of the SE ¼ NE ¼, SW ¼ NE ¼, SE1/4NW1/4, 146.69 ac, Dakota County, Nebraska (“Subject Property”).
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$823,120 for tax year 2015.
3. The Taxpayer protested this value to the Dakota County Board of Equalization (the County Board) and requested an assessed value of \$223,683 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$823,120 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 14, 2016, at the Ramada Inn Conference Center, Columbus, Nebraska, before Commissioner Nancy J. Salmon.
7. John J. Huse was present at the hearing for the Taxpayer.
8. Jeff Curry, Dakota 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 asserts that the 2015 assessed valuation on the Subject Property exceeds the value of the property as contemplated by the Nebraska Constitution. Specifically, he contends that such value is not in compliance with Article VIII, Section 1 of the Constitution which allows the Legislature to enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall be that value which such land has for agricultural or horticultural use without regard to any value which land might have for other purposes or uses.⁹
17. As he did in his previous appeals to the Commission in 2012 and 2014,¹⁰ the Taxpayer seems to contend that compliance with the aforementioned constitutional requirement can only be satisfied by using the income approach of valuing real estate.
18. 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(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.).

⁹ Neb. Const. Art. VIII, §1(5).

¹⁰ TERC Cases 12A 077, 12A 078, 12A 079, 14A 056, 14A 057, 14A 058.

full description of the physical characteristics of the real property and an identification of the property rights being valued.¹¹

19. The Taxpayer has asserted that the Nebraska Constitution Article VIII, § 1(5) imposes restrictive standards for the assessment of agricultural and horticultural land that are only satisfied by the assessment of agricultural and horticultural land using the income approach. The Nebraska Constitution Article VIII, §1(5) states in relevant part: [T]he Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses[.]
20. The Nebraska Constitution, therefore, permitted the Legislature to develop the manner and criteria for the valuation of agricultural and horticultural land at a value other than actual value when the agricultural and horticultural land's actual value is impacted by a use or purpose other than a use for an agricultural or horticultural purpose.¹² The Legislature has enacted laws permitting the valuation of agricultural and horticultural land at a value other than its actual value when the actual value of the agricultural and horticultural land is influenced by uses for purposes other than agricultural or horticultural uses.¹³ The Legislature has labeled the value of agricultural and horticultural land at a value other than actual value when the actual value of the agricultural and horticultural land is influenced by uses for purposes other than agricultural or horticultural purposes as special valuation, or the special value of the agricultural and horticultural land.¹⁴
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."¹⁵
22. The Taxpayer asserts that the County Board rendered insufficient consideration of his claim at his protest hearing as no reasons were given to him for the Referee's recommendations.
23. All hearings before the Commission are de novo.¹⁶ The Commission may consider new theories, arguments, and evidence even if the evidence was not provided to the County Board.¹⁷ For this reason, the Taxpayer's rights could be protected by the ability to present the evidence to the Commission.

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² See, Neb. Cons. Art. VIII, §1(5).

¹³ See, Neb. Rev. Stat. §77-1344 (Reissue 2009).

¹⁴ See, Neb. Rev. Stat. §77-1344 (Reissue 2009).

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

¹⁶ 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).

¹⁷ See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2014); See also, *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, N.W.2d 802, 813 (2008).

24. For the reasons discussed above, the Commission finds that the Taxpayer's assertion that the County Board did not sufficiently consider his protests does not amount to sufficient evidence that the County Board's determinations were unreasonable or arbitrary.
25. 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.
26. 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:

<u>Land</u>	<u>\$823,120</u>
Total	\$823,120

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 June 24, 2016.

Signed and Sealed: June 24, 2016

Nancy J. Salmon, Commissioner