

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Darrell D. Bruns,
Appellant,

v.

Jefferson County Board of Equalization,
Appellee.

Case No: 14A 149, 15A 0028

Decision and Order Affirming Jefferson
County Board of Equalization

Background

1. The Subject Property is an unimproved parcel, with a legal description of: Pt E ½ 16-2-2, 161.74 acres, Jefferson County, Nebraska.
2. The Jefferson County Assessor (the County Assessor) assessed the Subject Property for case 14A 149 at \$233,988 for tax year 2014 and case 15A 0028 at \$254,782 for tax year 2015
3. The Taxpayer protested this value to the Jefferson County Board of Equalization (the County Board) and requested an assessed value for case 14A 149 at \$125,000 for tax year 2014 and case 15A 0028 for \$65,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was for case 14A 149 at \$233,988 for tax year 2014 and for case 15A 0028 for \$254,782 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 March 1, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
7. Darrell D. Bruns was present at the hearing for (Taxpayer).
8. Mary Banahan, Jefferson 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

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).

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 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 asserted that the 2014 and 2015 valuation of the 132.56 acres of the Subject Property deeded on a Warranty Easement Deed as part of the Wetland Reserve Program (WRP) are overvalued.
17. The Taxpayer asserted that the valuation of Wetland acres should not be tied to grassland valuation. The Taxpayer provided a list of 21 counties he made phone calls to and discussed the valuation of Wetland Reserve Acres in those 21 counties. He asserted that the valuation in each of those counties was less than Jefferson County. His opinion of value for Wetland Reserve Acres was \$1000 per acre after speaking with two different agents. The Taxpayer did not bring an appraisal or documentation supporting his value.
18. The Taxpayer asserted he has read Reg 14⁹ and understands Wetland Reserve Acres are not agricultural land and must be assessed at Market Value.
19. The County Assessor stated that she assesses Wetland Reserve Acres as Recreational Land and is assessed like all recreational land in Jefferson County. She uses the Soil Types from the NRCS and puts it into Land Capability Groupings (LCG’s) as directed by

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 Title 350 Neb. Admin. Code ch 14 (10/14)

the Property Tax Administrator. Land Capability Groups (LCG's) are "groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification."¹⁰

20. The Recreational Land in the county is then valued at the Grassland Actual Value for each of the Land Capability Groupings. The Assessor did not provide the Commission any sales of Recreational Land.
21. The County Assessor provided the Commission with two property record cards of parcels with acres enrolled in WRP. The Commission finds that there is no evidence that the WRP land on the Subject Property was assessed any differently than any other WRP Land in the County.
22. Neither party provided the Commission with any sales of parcels with acres enrolled in WRP.
23. Land enrolled in WRP must be assessed at its actual value and is not considered to be used for agricultural or horticultural purposes.¹¹
24. A Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.¹²
25. 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.
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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2014 and 2015, is Affirmed.
2. The taxable value of the Subject Property for Tax year 2014 is \$233,988.
3. The taxable value of the Subject Property for Tax year 2015 is \$254,782.
4. This Decision and Order, if no further action is taken, shall be certified to the Jefferson County Treasurer and the Jefferson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

¹⁰ Title 350 Neb. Admin. Code ch 10 §002.15B(2) (10/14) and Title 350 NAC Chapter 14, §002.41 (03/09).

¹¹ 350 Neb. Admin. ch. 14 §002.06B (03/09).

¹² *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2014 and 2015.
8. This Decision and Order is effective on March 4, 2016.

Signed and Sealed: March 4, 2016

Nancy J Salmon, Commissioner