

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dennis A. Bidne,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 15A 0141

Decision and Order Reversing
The Decision of the Otoe County
Board of Equalization

Background

1. The Subject Property is an 88.78 acre tract located in part of the NE1/4 SW1/4 and part of the W1/2 SE1/4, 1-7-14, Otoe County, Nebraska.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$323,990 for tax year 2015. The Subject Property’s land was assessed at \$301,850 and the improvements at \$22,140.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$149,289 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$323,990 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 November 23, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Dennis A. Bidne and Gary Gauchat were present at the hearing for the Taxpayers.
8. John Palmtag, Deputy Otoe County Attorney, was present for the County Board. Also present for the County Board were County Assessor Therese Gruber and Deputy County Assessor Christy Smallfoot.
9. At the hearing, the Commission ordered that a post-hearing inspection be performed on the improvements on the Subject Property. The parties agreed to submit the results of the inspection to the Commission for consideration. On December 23, 2016, Mr. Palmtag filed a “Confession of Judgment,” indicating that the parties had agreed that the valuation of the improvements on the Subject Property was \$5,670.
10. On December 28, 2016, the Commission entered its Findings and Order (Confession of Judgment) wherein it reduced the valuation of the Subject Property’s improvements to the stipulated amount of \$5,670. The Order did not change the amount of the valuation of the Subject Property land.
11. On January 4, 2017, the parties orally informed the Commission’s staff that the “Confession of Judgment” was in fact a stipulation referring only to the improvements and not the land. The Commission staff was informed that notwithstanding the

“Confession of Judgment,” the valuation of the land on the Subject Property remained at issue.

12. On January 6, 2017, the Commission vacated *sua sponte* its prior Order and Findings, and the matter was again submitted to a single commissioner.

Applicable Law

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
14. The Commission’s review of the determination of the County Board of Equalization is de novo.²
15. 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
16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
18. 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
19. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

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).

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(9) (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.).

Findings of Fact

20. The Taxpayer's first issue concerned the valuation of the improvements on the Subject Property. Based upon the parties' stipulation, the valuation of the improvements is found to be \$5,670.
21. The Taxpayer also disputed the assessment of the Subject Property as recreational property. As recreational property the Subject Property was assessed at \$3,400 per acre. The Taxpayer contended that the Subject Property was agricultural land and horticultural land and should be valued accordingly.
22. The submitted evidence indicated that prior to tax year 2014 the Subject Property was classified as agricultural land and horticultural land and valued as grassland. For tax year 2014, the County Assessor first classified the property as recreational land based on her opinion that the parcel was no longer used primarily for agricultural purposes.
23. The Taxpayer stated that the Subject Property was purchased in 2001 for \$600 per acre. The land has historically been leased to a local cattle farmer who grazes 20 cow/calf units on the Subject Property from spring to fall. Annual rent is paid to graze the cattle on the Subject Property. No commercial hunting takes place on the property, and there are no commercial hunting leases. The three owners of the Subject Property do occasionally hunt deer on the property, but such use is sporadic. There is no camping on the property.
24. Under the Rules and Regulations of the Property Assessment Division of the Nebraska Department of Revenue, recreational property means "all parcels predominantly used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of these uses are fishing, hunting, camping, boating, hiking, picnicking, or having an access or view that simply allows diversion, entertainment, and relaxation."⁹
25. Based upon the documents and testimony submitted in relation to this appeal, the Commission finds that while the Subject Property may sporadically be used for hunting purposes, its predominant use remains for agricultural purposes.
26. The Commission is authorized by statute to consider and utilize publications included in the Commission's Rules and Regulations.¹⁰ Specifically, the Commission may consider and utilize the Reports and Opinions of the Property Tax Administrator.¹¹ In this instance, the Commission has made reference to the Reports & Opinions for Otoe County for tax year 2015.¹²
27. The Commission has reviewed the County Assessor's Agland Inventory Report and notes that the Subject Property is located in Market Area 8000 within Otoe County.

⁹ Title 350 NAC Chapter 14, § 002.15J

¹⁰ See, Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.).

¹¹ See, Title 442 NAC, Chapter 5 §031.02 (06/06/11).

¹² https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/2015_exhibit_list/66Otoe.pdf. See, in particular, page 23, Otoe County 2015 Average Acre Value Comparison.

28. The Agland Inventory Report includes the acre totals for each Land Capability Group (LCG),¹³ (shown as “LVG Code” in the Report).
29. The Commission has utilized the Reports & Opinions and the Agland Inventory Report to determine the value of the acres in each LCG.
30. In applying the information set forth in the aforementioned documents, the Commission performed the following calculations:

<u>Classification</u>	<u>Number of Acres</u>	<u>Value per Acre</u>	<u>Ass. Value</u>
4D	11.47	\$3,000	\$34,410
1D	5.08	\$4,600	\$23,368
3D	1.91	\$3,900	\$ 7,449
Farmsite	1.00	\$1,000	\$ 1,000
4G	21.53	\$1,212	\$26,094
4GT1	5.75	\$ 950	\$ 5,463
1GT1	1.05	\$1,300	\$ 1,365
4GT1	40.99	\$950	\$38,940
Total Assessed Value			\$138,089

31. Based upon the foregoing calculations, the Commission finds the value of the land situated on the Subject Property to be \$138,089.

Conclusions of Law

32. 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.
32. 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 and reversed.¹⁴

ORDER

IT IS ORDERED THAT:

1. The Decision of the Otoe County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 is vacated and reversed.

¹³ See, Title 350 NAC Chapter 14, §002.41, defining Land Capability Groups as “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.”

¹⁴ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$138,089
<u>Improvements</u>	<u>\$ 5,670</u>
Total	\$143,759

3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe 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 January 17, 2017.

Signed and Sealed: January 17, 2017

Robert W. Hotz, Commissioner