

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William C. Cronican,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 13A 018

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

Procedural Background

1. A Single Commissioner hearing was held on June 12, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
2. William C. Cronican and Constance A. Cronican (the Taxpayer) were present at the hearing.
3. David Partsch, Otoe County Attorney, John Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christi Smallfoot, Deputy Otoe County Assessor were present for the Otoe County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an 11.3 acre agricultural and horticultural parcel in Otoe County, Nebraska. The legal description of the parcel is in the Case File.
5. For tax year 2013, the Otoe County Assessor (the Assessor) classified the Subject Property as recreational land and assessed a value of \$37,290.
6. The Taxpayer protested this value to the County Board and requested a taxable value of \$11,760 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$37,290 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Applicable Law

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²
10. 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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. “Wasteland includes land that cannot be used economically and are not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. 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
16. “Recreational shall mean all parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.”¹⁰

Analysis

17. William Cronican stated that the Subject Property had been subjected to Missouri River flooding in 2011. As a result of the flooding, he said that 50% of the earth levees associated with the parcel had been washed out and that the parcel had been entirely under water for a substantial amount of time. As a result of the flooding, sand, silt, and debris had been deposited on the parcel. In some portions of the parcel the deposits were several feet deep. According to Cronican, at the time of the flood event of 2011, row crops were planted on the parcel.
18. Cronican stated that after the floodwaters receded 3 acres of the parcel were sown in alfalfa, but the remaining 8.3 acres were used only for hunting.

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) (2012 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) (2012 Cum. Supp.).

⁹ Title 350, Chapt. 14, §002.54.

¹⁰ Title 350, Chapt. 10, §001.05E.

19. The Taxpayer argued that the 8.3 acres should not be classified as recreational, but instead should be assessed as wasteland. The Assessor disputed that the remaining 8.3 acres should be classified as wasteland.
20. Under the applicable Rules and Regulations, the Taxpayer's argument that the parcel should be classified as wasteland fails with respect to the requirement that it must be shown that the Subject Property was "lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes." Property Record Cards indicated that the Taxpayer owns a parcel adjacent to the Subject Property, but according to records, and the Taxpayer's statements, the property is treed and is only used for hunting. The Taxpayer admitted that the adjacent property was not used for agricultural or horticultural purposes, but rather was used only for recreational purposes, including hunting.
21. The Assessor asserted that the parcel should be classified as recreational land, but conceded that the 3 acres sown in alfalfa should be assessed at 75% of its market value as recreational land due to its agricultural use.
22. The parties agreed that the two uses of the parcel were growing alfalfa and hunting. The alfalfa production involved 3.3 acres of the parcel. The hunting was done in conjunction with hunting the treed adjacent land discussed above.
23. The applicable Rules and Regulations require that the parcel be classified as recreational if its predominate use or intended use is for "diversion, entertainment, and relaxation on an occasional basis." While it is undisputed that 3 acres of the parcel are used for the production of alfalfa, the Commission finds that as of the effective date of January 1, 2013, the parcel was predominately used or intended to be used for recreational purposes.
24. However, the Commission finds that since the 3 acres were sown in alfalfa, that portion of the parcel should be assessed at 75% of its market value as recreational land due to its agricultural use.
25. The assessed value of \$37,290 was based upon a determination that each acre of recreational land be valued at \$3,300.¹¹
26. The Commission therefore finds that the Subject Property was appropriately classified as recreational land, that 3 acres of the parcel should be assessed at 75% of its market value as recreational land due to its agricultural use,¹² and that the remaining 8.3 acres should be assessed at 100% of market value as classified as recreational land.¹³
27. 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.¹⁴
28. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.¹⁵

¹¹ $11.3 \times \$3,300 = \$37,290$.

¹² $(3 \times \$3,300) \times .75 = \$7,425$.

¹³ $8.3 \times \$3,300 = \$27,390$.

¹⁴ Assessed 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 at the protest proceeding.

¹⁵ *Id.*

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 2013 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is \$34,815.
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 (2012 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 2013.
7. This Decision and Order is effective on June 20, 2014.

Signed and Sealed: June 20, 2014.

Robert W. Hotz, Commissioner