

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry D. Rexroth,
Appellant,

v.

Richardson County Board of Equalization,
Appellee.

Case Nos: 14A 005, 14A 006, 14A 007, 14A
008, & 14A 009

Decision and Order Reversing the
Determinations of the Richardson
County Board of Equalization

1. A Single Commissioner hearing was held on February 23, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Salmon.
2. Larry D. Rexroth (the Taxpayer) was present at the hearing.
3. Pamela Vice, Richardson County Assessor (the County Assessor), was present for the Richardson County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) consists of five agricultural parcels, with a legal descriptions of: 14A 005 – Parcel ID # 74008994 N ½ NW ¼ & SW1/4 NW ¼ 11-1-13 cont 120Ac, 14A 006 – Parcel ID # 740170485 Pt of NE 1/5 All S of County Rd 28-1-13 cont. 140.16 Ac, 14A 007 – Parcel ID # 740125974 All of Sec. N of old Nemaha Channel & Sou of New Nemaha Channel Exc. N ½ NW ¼ 36-2-13 cont. 167.1 Ac., 14A 008 – Parcel ID # 740008668 E ½ E of 4 mile creek 6-1-14 cont. 179.28 Ac., 14A 009 – Parcel ID # 740034421 S ½ NE ¼ & Lot 2 in NW ¼ NE ¼ 7-1-15 cont. 115.3 Ac., Richardson County, Nebraska.

Background

5. The County Assessor assessed the Subject Property for tax year 2014 at \$389,092 for Case No. 14A 005, \$466,763 for Case No. 14A 006, \$483,407 for Case No. 14A 007, \$597,112 for Case No. 14A 008, and \$307,824 for Case No. 14A 009.
6. The Taxpayer protested these values to the County Board and requested assessed values of \$311,275 for Case No. 14A 005, \$373,410 for Case No. 14A 006, \$386,726 for Case No. 14A 007, \$477,690 for Case No. 14A 008, and \$246,259 for Case No. 14A 009 for tax year 2014.
7. The County Board determined that the taxable values of the Subject Property were \$389,092 for Case No. 14A 005, \$466,763 for Case No. 14A 006, \$483, 407 for Case No. 14A 007, \$597,112 for Case No. 14A 008, and \$307,824 for Case No. 14A 009 for tax year 2014.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

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 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. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁰ In order to determine a proportionate valuation, a comparison of the

¹ 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).

² *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(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 *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

ratio of assessed value to market value for both the subject property and comparable property is required.¹¹ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹²

16. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”¹³
17. “Misclassifying property may result ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”¹⁴
18. The Taxpayer asserted that several parcels of agricultural land in Richardson County were assessed in tax year 2014 as dry land even though the properties were irrigated. He asserted that the actual value of these properties was much higher as irrigated land, and, therefore, these properties were significantly undervalued.
19. Conversely, he asserted that the Subject Property was used as dry land in tax year 2014 and that it was assessed at 75% of the actual value of dry land. The Taxpayer asserted that this resulted in the Subject Property’s assessed values being grossly excessive and not proportionate to the assessed values of the other parcels.
20. The Taxpayer provided the property record cards of 16 parcels in the Subject Property’s market area. The land valuation listings on the property record cards listed the LCGs as dry on 14 of the alleged comparable properties and irrigated on two of the alleged comparable properties. The Taxpayer visited all 16 of the comparable properties and provided photos.
21. The Commission notes that there are irrigation pivots on all 16 of the alleged comparable properties. The Taxpayer stated that on several of the comparable properties, trees had been removed to allow for crop production and irrigation of acres that were not used for agricultural or horticultural purposes in the past. Several of the property record cards indicate that permits to add pivots were obtained as far back as 2010. The Taxpayer agreed with the Assessor’s opinion of actual value for the irrigated LCGs. The Taxpayer’s only assertion was that the County Assessor had misclassified irrigated parcels resulting in assessed values that were not uniform or proportionate.
22. The County Assessor did not dispute the assertions of the Taxpayer. She provided the Commission with several property record cards where irrigated acres were classified correctly and sales information supporting her actual values for irrigated LCGs.

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁴ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

23. The Commission finds that there is clear and convincing evidence that the Subject Property's assessed values are grossly excessive when compared with other similar properties in violation of the Nebraska Constitution.¹⁵
24. While the Taxpayer supplied clear and convincing evidence that irrigated parcels had been assessed as dry land, the quantification of the amount of relief to apply to the Subject Property was less clear.
25. The Commission converted the area listed as dryland acres on the comparable properties to irrigated acres to derive the actual value of the portions of the irrigated parcels used for agricultural and horticultural purposes. The Commission then divided the actual value of the portions of the irrigated parcels used for agricultural and horticultural purposes by the assessed values of the portions of the irrigated parcels used for agricultural and horticultural purposes. The Commission finds that all of the irrigated parcels were assessed at less than 75% of actual value and that irrigated parcel 740023748 was only assessed at 64.56% of actual value, contrary to Nebraska Statutes.¹⁶ The Commission did not use parcel 740038737 in the analysis because there were several acres assessed as irrigated. The Taxpayer stated that some of the tress had been removed and another pivot added, but the Commission was uncertain which LCG's would be affected. Parcels 740041312 and 740041304 were not used in the analysis. The Taxpayer asserted that the trees had been removed and pivots were added and it was planted to crop, but the Commission has no knowledge which LCG's would be affected.
26. The Commission finds that the portions of the Subject Property used for agricultural and horticultural purposes should be equalized with irrigated parcels at 64.56% of actual value.
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.
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.

ORDER

IT IS ORDERED THAT:

1. The decisions of the Richardson County Board of Equalization determining the taxable values of the Subject Property for tax year 2014 are Vacated and Reversed.
2. The taxable values of the Subject Property for tax year 2014 are:

¹⁵ *Neb. Const.*, Art. VIII, §1.

¹⁶ See, *Neb. Rev. Stat.* §77-112 (Reissue 2009).

14A 005

Land	\$314,668
<u>Improvements</u>	<u>\$ 24,019</u>
Total	\$338,687

14A 006

<u>Land</u>	<u>\$401,790</u>
Total	\$401,790

14A 007

Land	\$414,098
<u>Improvements</u>	<u>\$ 2,500</u>
Total	\$416,598

14A 008

Land Value	\$513,244
<u>Improvements</u>	<u>\$ 1,036</u>
Total	\$514,280

14A 009

<u>Land Value</u>	<u>\$264,975</u>
Total	\$264,975

3. This Decision and Order, if no further action is taken, shall be certified to the Richardson County Treasurer and the Richardson 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 on March 3, 2015.

Signed and Sealed: March 3, 2015

Nancy J. Salmon, Commissioner