

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Randy S. Gleason,
Appellant,

v.

Buffalo County Board of Equalization,
Appellee.

Case No: 14A 146

Decision and Order Affirming the
Determination of the Buffalo
County Board of Equalization

1. A Single Commissioner hearing was held on September 10, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
2. Randy S. Gleason (the Taxpayer) was present at the hearing.
3. Andrew W. Hoffmeister, Deputy Buffalo County Attorney, was present for the Buffalo County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) consists of agricultural land and horticultural land, with a legal description of: 2-12-13 SW ¼ (160 ac), Buffalo County, Nebraska.

Background

5. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$525,365 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$325,000 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$525,365 for tax year 2014.
8. The Taxpayer appealed the determination 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

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).

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. The Taxpayer asserted that the Subject Property was over assessed for tax year 2014, because the soil types had been inappropriately classified and, therefore, assigned inappropriate land classification groups (LCGs). The Taxpayer hired Jared Jensen of Ward Laboratories to take samples of the soils on the Subject Property, analyze the soils, and provide conclusions about the County Assessor’s assignment of LCGs.
16. Jared Jensen was not present to testify at the hearing, but the Taxpayer produced Jensen’s soil analysis and conclusions addressed to the County Assessor. Jensen concluded that;

The soil texture analysis contains a high percentage of sand, low organic matter, and low cation exchange capacity and in my opinion is not in the same category as your evaluation. The soil tests provide the information to classify the soil types as lower productive soils... Fields with high percentage sand, low organic matter, and low cation exchange capacity can not [sic] produce as much as a farm that has high organic matter, high cation exchange capacity, and contain higher levels of silt.
17. The Taxpayer asserted that portions of the Subject Property frequently flood and do not produce any crop approximately 50% of the time.

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.).

18. The Taxpayer provided the actual yield rates for the Subject Property from 2005 to 2015, and the average yield rate of 134 bu/acre over that time period. The Taxpayer asserted that he owns other agricultural land and horticultural land in Buffalo County that averages yields of 250 bu/acre over the same period.
19. The Taxpayer asserted that on his appeal to the County Board he requested a value of \$325,000. It was his assertion that this may not be the correct assessed value for the Subject Property but that the assessed valuation of \$525,365 was unrealistic. He was unable to quantify to the Commission how much the productivity would affect the sale price.
20. The County Assessor explained that the Subject Property was valued using the Sales Comparison Approach. He provided the Commission with property record cards for six comparable sales and explained that 36 sales were used to set the 2014 valuations for Market Area 1. He noted that he sets the value using the soil types set by the Soil Conservation Service and the LCG's assigned to those soil types by the Property Tax Administrator. He advised the Taxpayer to contact the Soil Conservation Service if he believed the soils on his farm were incorrect.
21. The Commission is authorized by statute to take notice of publications included in the Commission's rules and regulations without taking notice on the record.⁹ The Commission has taken notice of the "Soil Survey for each of the 93 counties of the State of Nebraska as published by the United States Department of Agricultural or its subdivisions[.]"¹⁰
22. The Commission compared the Subject Property's soil types, soil textures, composition, and cation exchange capacities as contained in the Jensen analysis with those found in the Soil Survey.¹¹
23. The Commission notes that the soil types assigned by the County Assessor to the Subject Property as contained in the Subject Property's property record file are identical to the soil types assigned in the Soil Survey.
24. The Commission notes that soil types assigned by the soil survey contain significantly similar characteristics as the Jensen analysis; including but not limited to similar soil textures, saturations, and cation exchange capacities.
25. Further, the County Board provided the Commission with the Property Tax Administrator's soil conversion chart which translates the soil types into LCGs. The Commission has reviewed the soil conversion chart and the LCGs and determines that the County Assessor assigned the soil types on the Subject Property the LCGs as directed by the Property Tax Administrator's soil conversion chart.
26. Other than the Taxpayer's and Jensen's general assertions, there is no direct evidence that the Property Tax Administrator's soil conversion chart assigned inappropriate LCGs to

⁹ See, Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.).

¹⁰ See, 442 Neb. Admin. Code, ch. 5 §031.02 (06/06/11).

¹¹ The current Soil Survey is produced by the Natural Resources Conservation Service which is a subdivision of the United States Department of Agriculture and can be accessed online at <http://websoilsurvey.sc.egov.usda.gov>.

the soil types. The Commission also notes that none of the Subject Property's soil types are assigned high capability LCGs and that most of the soil found on the Subject Property is assigned an LCG in the lower half of the capability classifications.

27. The Taxpayer did not quantify a convincing opinion of the actual value of the Subject Property, and an examination of the rest of the evidence in the case indicates that there is not clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.
28. The Taxpayer also asserted that the Subject Property was not equalized with other properties within Buffalo County and was assessed at higher per acre values than properties located outside of Buffalo County.
29. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹² 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.¹³
30. Properties located outside of Buffalo County are not located within the same taxing district as the Subject Property, and an examination of these properties for equalization purposes would, therefore, not fit within the purpose of equalization on appeal from a County Board determination. The examination of the equalization of real property between all 93 counties in Nebraska occurs during the statewide equalization process.
31. Concerning the Taxpayer's assertions that other properties within Buffalo County were not equalized with the Subject Property, the Commission notes that in order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and any comparable property is required.¹⁴ 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.¹⁵
32. 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]."¹⁶
33. At least two tests exist for determining if property within a taxing district is equalized: (1) does a comparison of the ratio of assessed to actual value indicate that properties are assessed at different levels of value;¹⁷ and (2) are substantial similar properties valued at materially different levels of value.¹⁸

¹² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹³ *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).

¹⁴ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁸ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

34. To determine if substantially similar properties are valued at materially different levels of value the Commission may review the assessed value per square foot of the Subject Property and comparable properties.¹⁹ However, the Commission notes that the Taxpayer did not provide the information necessary to examine specific comparable properties.
35. Finally, the Taxpayer did not provide any ratios of the assessed values to the actual values for the Subject Property or any of the comparable properties.
36. The Commission notes that the Subject Property is equalized with the six sales provided by the County Assessor.
37. 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.
38. The Taxpayer has not produced clear and convincing evidence that the assessed value of the Subject Property is grossly excessive when compared to similar properties.
39. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Buffalo County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$525,365.
3. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo 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 September 15, 2015.

Signed and Sealed: September 15, 2015

Nancy J. Salmon, Commissioner

¹⁹ See, *Scribanite v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).