

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lawrence E. Stuchlik,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 15A 0014

Decision and Order Affirming the Decision
of the Saunders
County Board of Equalization

Background

1. The Subject Property is a 154 acre agricultural parcel located in Saunders County, Nebraska. The legal description of the Subject Property is found in the Case File.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$546,540 for tax year 2015.
3. Lawrence E. Stuchlik (the Taxpayer) protested this value to the Saunders County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$541,310 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 7, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Lawrence E. Stuchlik was present at the hearing.
8. Steven J. Twohig, Saunders County Attorney was present for the County Board. Kyle Morgan, an employee of the County Assessor, was also present.

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 first complained that the increase in assessed value from tax year 2014 to tax year 2015 was too high. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
17. The Taxpayer agreed that the land capability groups¹¹ and acre totals on the property record card were correct.
18. The Taxpayer asserted that CRP land was assessed higher than non-CRP grassland. He argued that the highest and best use of CRP land and non-CRP grassland was the same and that his CRP acres should be assessed no higher than non-CRP grassland. He also

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 See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

¹¹ Land capability groups 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.” 350 NAC Chapter 14, §002.41.

asserted that the reason he put some of his acres into CRP was because the land was so poor and because it was more economical to do so.

19. Analysis done by the County Assessor indicated that CRP land sold at higher prices per acre than non-CRP grassland.
20. According to the property record card, 57.5 acres of the 154 acres had been assessed as CRP land rather than as non-CRP grassland.
21. A referee appointed by the County Board¹² inspected the Subject Property on June 23, 2015. After reviewing FSA¹³ maps, the referee recommended a reduction in the number of acres to be assessed as CRP land from 57.5 acres to 54.36 acres, resulting in a reduction in the actual value of the parcel.¹⁴
22. The referee also recommended that, “the [County Board] petition [the Commission] to adjust CRP values,” but he did not quantify an opinion of per acre value that differed from the assessment.
23. The Commission finds that the Taxpayer’s use of the 54.36 acres as CRP rather than as grassland for economic reasons is an indication that CRP land should be valued higher than non-CRP grassland. However, there is insufficient information in the record of this case to quantify any difference in value.
24. 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.
25. 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 Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$541,310.
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders 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.

¹² A referee may be appointed by a county board of equalization pursuant to Neb. Rev. Stat. §77-1502.01 (Reissue 2009).

¹³ United States Department of Agriculture Farm Service Agency.

¹⁴ The recommendation by the referee of a taxable value of \$541,310 was adopted by the County Board.

6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on April 25, 2016.

Signed and Sealed: April 25, 2016

Robert W. Hotz, Commissioner