

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald L. Shandera,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 15A 0094

Decision and Order Affirming the Saunders
County Board of Equalization

Background

1. The Subject Property is a 120 acre agricultural parcel located in Saunders County, Nebraska. The legal description is found in the Case File.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$623,410 for tax year 2015.
3. The Taxpayer protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$476,892 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$608,870 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 8, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Donald L. Shandera (the Taxpayer) and Donald Shandera were both present at the hearing.
8. Steven J. Twohig, the Saunders County Attorney, was present for the County Board.
9. Kyle Morgan, an appraiser for the County Assessor, was also present.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. 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).

12. 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
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact

17. In its determination of the taxable value of the Subject Property, the County Board made adjustments for storm damage done to the improvements. Therefore, in this appeal, the Taxpayer puts at issue only the contribution to value of the agricultural land.⁹
18. The Taxpayer asserted that the taxable value of the Subject Property had increased too much from tax year 2014 to tax year 2015. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹¹ Therefore, the percentage increase in taxable value from the prior tax year is not determinative of the taxable value for the current year.

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 The County Assessor set the contribution to value of the improvements at \$76,420. In its determination of taxable value, the County Board set the contribution to value of the improvements at \$66,420. The Taxpayer did not dispute this amount.

¹⁰ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ 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).

19. The Taxpayer did not dispute the assessment of 12.51 acres of the parcel as timberland (tree)¹² with an assessed value of \$500 per acre.
20. The Taxpayer asserted that 15.08 acres of the parcel that were assessed as grassland¹³ should instead be assessed as wasteland.¹⁴ The Taxpayer stated that this land was not used for haying or grazing. The Taxpayer argued that the 15.08 acres were not useable because of annual flooding, and asserted that approximately 22 acres of the parcel flooded every year, with 11 acres having a high risk of loss. The Taxpayer provided aerial photographs of the parcel from 2006, 2009, 2013, and 2014, depicting the characteristics of the land and its uses over that time period. The Commission has reviewed the information provided and finds that the most relevant information suggests that the 15.08 acres has some economic usefulness. Based on the information provided at the hearing, the Commission cannot conclude that there is clear and convincing evidence that the County Board was arbitrary or unreasonable when classifying the 15.08 acres as grassland rather than as wasteland.

Conclusions of Law

21. 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.
22. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable.
23. The decision of the County Board should be affirmed.

¹² Timberland and Forestland is “land which is wooded by nature or humans and consisting of a dense growth of trees and underbrush such that it is not suitable for grazing.” 350 NAC Chapter 14, §002.29.

¹³ Grassland is “the state and condition of the range based on what it is naturally capable of producing. Grassland includes all types of grasses, permanent bromegrass, other introduced grasses, and native grasses used for grazing or mowed for hay. In many instances it is not possible to identify permanent bromegrass from temporary bromegrass that is grown as part of the crop rotation. For this reason, all of the present bromegrass should be classified as grassland until the area is returned to cultivation. There may be situations where an alfalfa and grass mixture is grown in rotation with cropland or is harvested for hay. These areas can be classified as cropland but their market value may be more representative of grassland. Areas of wooded grazing land are classified as grassland not timberland or wasteland. When there are significant areas of trees or timber on a parcel, and it can no longer be grazed, consideration needs to be given to placing the affected acres in the forestland and timberland category.” 350 NAC Chapter 14, §002.31.

¹⁴ Wasteland includes “land that cannot be used economically and are [sic] 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. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts, which are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification.” 350 NAC Chapter 14, §002.54.

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

Land	\$542,450
<u>Improvements</u>	<u>\$ 66,420</u>
Total	\$608,870

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.
6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on April 15, 2016.

Signed and Sealed: April 15, 2016

Robert W. Hotz, Commissioner