

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald L. Shandera,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 15A 0095

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

Background

1. The Subject Property is an 80 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 \$435,310 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 \$396,132 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$437,650 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.
10. At the hearing, the Commission ordered that the County Assessor conduct a physical inspection of the property and submit the results of that inspection to the Commission by April 8, 2016.

Applicable Law

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
12. 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).

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

Findings of Fact & Conclusions of Law

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.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰ Therefore, the amount of increase in taxable value from the prior tax year is not determinative of the taxable value for the current year.
19. The Taxpayer asserted the crops on the east side of the Subject Property suffered from mold because of excess water running onto the property. The Taxpayer did not quantify what affect, if any, the mold had on the market value of the property.

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).

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).

20. The Taxpayer asserted that on the north side of the Subject Property's ridge, the soil is sandy wasteland and it does not have as high of value as the rest of the dryland. The assessment accounted for this soil by using soil type 8145. The property record file indicates that 6.10 acres were assessed as soil type 8145, and a 3D Land Capability Grouping (LCG),¹¹ with an assessed value of \$4,500 per acre, was utilized. This appears to be reasonable.
21. The Taxpayer asserted that there is a drainage ditch several feet deep in the Northwest corner of the parcel. The Taxpayer stated that the ditch has filled with sediment and is not capable of crop production.
22. After reviewing an aerial photograph at the hearing, Kyle Morgan, an appraiser for the County Assessor, stated that 1.5 acres of this drainage ditch would properly be classified as wasteland¹² at \$110 per acre.
23. However, after the hearing, and after inspecting the Subject Property, Morgan concluded that the drainage ditch should instead be considered a drainage way,¹³ and that the original assessment was not incorrect. We disagree. The Commission cannot conclude both that the original assessment was correct and that the drainage ditch is a drainage way as defined in the Rules & Regulations. A drainage way is not to be classified as having agricultural land and horticultural land uses, and shall be assessed at 100% of market value.¹⁴ The original assessment included the drainage ditch with a soil type that was assessed at 75% of market value.
24. After our review of the information provided by the County Board and the Taxpayer, we find that 1.5 acres of the drainage ditch are "land that cannot be used economically and are not suitable for agricultural or horticultural purposes." We, therefore, conclude that the 1.5 acres should have been classified as wasteland and assessed at \$110 per acre. A review of the applicable United States Department of Agriculture (USDA) soil survey¹⁵ indicates that the entire drainage ditch is located within soil type 7340 (and not within soil type 8145, as was stated at the hearing).

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.

¹² 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.

¹³ "Intermittent small drainage ways, with or without small channels, should be included with the surrounding land. They usually carry runoff only after rains." 350 NAC Chapter 14, §005.01D(1).

¹⁴ 350 NAC Chapter 14, §005.01. In contrast, agricultural land and horticultural land is valued at 75% of market value. See, Neb. Rev. Stat. §77-201(2).

¹⁵ 442 NAC Chapter 5, §031.02.

25. Therefore, the Commission finds that it is necessary to reduce the acre count for soil type 7340, LCG 2D1, by 1.5 acres and to add 1.5 acres as wasteland. This determination produces a taxable value of \$429,509.¹⁶
26. The Taxpayer has produced competent evidence to rebut the presumption in favor of the taxable value determination made by the County Board.
27. The Taxpayer has adduced clear and convincing evidence that the taxable value determination made by the County Board is arbitrary or unreasonable.
28. The decision of the County Board should be vacated and reversed.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is \$429,509.
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

¹⁶ (30.59 acres of soil type 7105, LCG 1D, at \$5,765 = \$176,352) + (7.16 acres of soil type 7280, LCG 1D1, at \$5,990 = \$42,888) + (32.97 acres of soil type 7340, LCG 2D1, at \$5,540 = \$182,654) + (6.10 acres of soil type 8145, LCG 3D, at \$4,500 = \$27,450) + (1.5 acres of wasteland at \$110 = \$165) = \$429,509