

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gary R. Olson,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No: 15A 0096

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

Background

1. The Subject Property is a 149.51 acre agricultural parcel located in Market Area 3 in Saunders County, Nebraska.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$644,600 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 \$450,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$644,600 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. Gary R. Olson (the Taxpayer) was present at the hearing.
8. Steven J. Twohig, Saunders County Attorney, was present for the County Board.
9. Kyle Morgan, an employee of 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).

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

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 soil classification for the Subject Property was inaccurate. The property record file indicates that the soil classifications and Land Capability Groups (LCG)⁹ of the Subject Property were assessed at the same value as other properties in the same Market Area with the same soil classifications and LCG codes.
19. The Taxpayer asserted that the taxable value of the Subject Property was too high in relation to a nearby property. Although similar in some respects, the comparison property is different because it is situated in a different Market Area. The Subject Property is located in Market Area 3 and the comparison parcel is located in Market Area 1.

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 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.

20. The Taxpayer asserted that 5.86 acres of the parcel that were assessed as grassland¹⁰ should have instead been assessed as wasteland.¹¹ After the hearing, Kyle Morgan physically inspected the property and agreed that the grassland classification should be changed to wasteland. The County Board agreed that the 5.86 acres should be classified as wasteland and valued at \$110 per acre.
21. Based upon that inspection and the photographs provided to the Commission, we find that the 5.86 acres would be properly classified as wasteland and should be valued at \$110 per acre.
22. This determination reduces the taxable value of the 5.86 acres from \$12,130 to \$645. Therefore, the taxable value of the Subject Property should be \$633,115.
23. 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.
24. The Taxpayer has 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 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.¹²
2. The taxable value of the Subject Property for tax year 2015 is \$633,115.

¹⁰ 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 brome grass, other introduced grasses, and native grasses used for grazing or mowed for hay. In many instances it is not possible to identify permanent brome grass from temporary brome grass that is grown as part of the crop rotation. For this reason, all of the present brome grass 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.

¹¹ 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.

¹² Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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 25, 2016.

Signed and Sealed: April 25, 2016

Robert W. Hotz, Commissioner