

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Brendan and Elizabeth Lockhorn Trust,  
Elizabeth A. Lockhorn, Trustee,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 15A 0029

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is comprised of 198.38 acres included in the NW1/4 and Part of N1/2SW1/4 of 1-12-14, Buffalo County, Nebraska.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at \$504,320 for tax year 2015.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$400,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$504,320 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 August 3, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J. Salmon.
7. Elizabeth A. Lockhorn was present at the hearing for the Taxpayer.
8. Andrew Hoffmeister, Buffalo County Deputy County Attorney, was present for the County Board. Also present was Buffalo County Assessor Joe Barber.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that her property was overvalued for several reasons. First, she questioned the County Assessor’s utilization of soil classifications for her agricultural land. For instance, she contends that all land in the 1A classification should not be valued the same since some farms are much smaller than others. Her farm contains 67 irrigated acres, and potential buyers will not pay the same per acre value for smaller tracts since they are not easily accessible to pivot irrigation systems. She also indicated that there were no comparable sales available for such tracts.
17. The County Assessor stated that he assessed 67 acres of the tract as irrigated land. He did so utilizing the market (sales comparison) approach. Actual value is defined by Nebraska Statute as:

[T]he market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.<sup>9</sup>

18. Valuation of agricultural and horticultural land is also addressed in the Nebraska Department of Revenue Regulations. See, Title 350, N.A.C. Chap. 14, §006. The regulations state that both a market (sales comparison) approach or an income approach may be used to determine actual value of agricultural or horticultural land, but “Reconciliation of final value is based on the appropriateness of the approach to value **(market value is preferred in the valuation of agricultural land)** and the availability and reliability of the information used in each approach.”<sup>10</sup>
19. The Commission finds that the sales and market approach best determines actual value of the Subject Property. The Taxpayer did not provide documentation to quantify the differences between properties such as hers and other irrigated land within the county. Nor did she provide sufficient evidence to allow for a determination of value using the income approach. The Commission is unable to provide relief without some quantifiable evidence.
20. The Agricultural Land and Horticultural Land Regulations define irrigated cropland as including “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”<sup>11</sup>
21. The Commission finds that the Taxpayer has not presented competent evidence to rebut the presumption of correctness of the County Board with respect to this issue.
22. The Taxpayer also expressed concern that the County Assessor determined that she has only 12 acres of waste land on her property. She asserts that there are actually 21 acres that should be categorized as waste land. The County Assessor indicated that the County’s agricultural appraiser had stated that the 12 acre amount was correct although the County Assessor indicated that he would be willing to arrange for a subsequent inspection of the property with respect to this issue.
23. “Wasteland includes land that cannot be used economically and are 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

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<sup>9</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>10</sup> 350 Neb. Admin. Code, Chap 14, §006.03 (Emphasis added).

<sup>11</sup> 350 Neb. Admin. Code, Chap 14, §002.21B.

these areas before making any determination of classification.” 350 Neb. Admin. Code, ch 14, §002.54 (0/15/09).

24. The Taxpayer contended that her property contains approximately 21 acres of black rush which is totally unusable as pasture. She stated this portion of her property grows 6-8 feet tall and is virtually impassable even by walking. The Commission finds that her statement with regard to this issue was clear and convincing. Without evidence of an inspection to the contrary, the Commission concludes that the Taxpayer’s assertion should be accepted.
25. The Commission finds that the Taxpayer has presented competent evidence to rebut the presumption existing in favor of the County Board with respect to the issue of the amount of waste land on her property and the taxable value for 2015 is \$498,245.<sup>12</sup>
26. 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.
27. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable with respect to the quantity of land which is waste, and the decision of the County Board should be reversed with respect to such issue.
28. 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.
29. 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.

## 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:

<u>Land</u>	\$498,245
Total	\$498,245

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.

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<sup>12</sup> - 9 acres 4G at 1025 = -9225 and + 9 acres waste at 350= + 3150. 504320-9225+3150=\$498,245

6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on August 11, 2016.

Signed and Sealed: August 11, 2016

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Nancy J. Salmon, Commissioner