

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert J. Hirschman,
Appellant,

v.

Howard County Board of Equalization,
Appellee.

Case No: 15A 0223 & 15A 0224

Decision and Order Reversing Howard
County Board of Equalization

Background

1. The Subject Property in Case No. 15A 0223 is a 20 acre tract having a legal description of W1/2W1/2W1/2NE1/4- 9-13-10, Howard County, Nebraska. The Subject Property in Case No. 15A 0224 is described as SW1/4 exc Sub & Hwy 12-14-10, Howard County,
2. The Howard County Assessor (the County Assessor) assessed the Subject Property in case 15A 0223 at \$42,463 and in case 15A 0224 at \$437,489 for tax year 2015.
3. The Taxpayer protested this value to the Howard County Board of Equalization (the County Board) and requested an assessed value of \$23,206 in case 15A 0223 and \$389,489 in case 15A 0224 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$42,463 in case 15A 0223 and \$399,089 in case 15A 0224 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 4, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J Salmon.
7. Robert J. and Kathryn A. Hirschman were present at the hearing for the Taxpayers.
8. Neal Dethlefs, Howard County Assessor, was present for the County Board.

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
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

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).

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. In Case No. 15A 0224, the Taxpayers asserted that eight (8) acres of the parcel that were assessed as dryland should have instead been assessed as grassland. In Case 15A 0223, the Taxpayers asserted that this twenty (20) acre parcel was assessed as dryland, but should have instead been assessed as grassland.
17. In support of their position, the Taxpayers provided evidence that the Farm Service Agency does not classify either the 8 acre tract or the 20 acre tract as cropland. Rather, they are both considered native grassland. The Taxpayers also stated that both tracts are entirely comprised of native grasses, and in most years, they obtain only one cutting of hay. In addition, the Taxpayers provided evidence of several parcels near the Subject Property which also contain native grasses with a single cutting per season. In those cases, the owners’ property has been classified as grassland.
18. The County Assessor indicated that he classified the two tracts as dryland cropland since the Taxpayers were cutting hay from the tracts, and the sale price at the time the Taxpayers acquired the properties indicated dryland values. As noted previously, the

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(9) (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.).

Taxpayer asserted that the two tracts should have been assessed as grassland⁹ instead of dryland.¹⁰

19. The Nebraska Constitution requires that“(t)axes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”¹¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹² The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹³
20. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.¹⁴ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁵ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹⁶
21. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁷ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”¹⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”
22. The Commission finds that the information submitted by the Taxpayer shows that the Subject Property more closely fits the definition of grassland, as footnoted, than the

⁹ 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.

¹⁰ Dryland cropland is “land that is primarily used for crop production without irrigation. Dryland cropland includes all cultivated row crops, small grains, and *seeded hay and forage crops* grown under dryland conditions. Alfalfa or alfalfa and brome grass used for hay, is considered cropland. Permanent brome grass used for grazing is considered grassland.” 350 NAC Chapter 14, §002.21A (Emphasis added).

¹¹ *Neb. Const.*, Art. VIII, §1.

¹² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁶ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

definition of dryland crop. The fact that the Taxpayers obtain one cutting of native grass per year does not result in a determination that the concerned land is cropland.

23. The submitted information also proves that owners of similarly utilized grassland were treated differently than the Taxpayers.
24. 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.
25. 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:

15A 0223

Land	\$23,206
<u>Improvements</u>	<u>\$</u>
Total	\$23,206

15A 0224

Land	\$389,489
<u>Improvements</u>	<u>\$</u>
Total	\$389,489

3. This Decision and Order, if no further action is taken, shall be certified to the Howard County Treasurer and the Howard 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 August 19, 2016

Signed and Sealed: August 19, 2016

Nancy J. Salmon, Commissioner

