

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wel JG Investment Properties, LLC,
Appellant,

v.

Colfax County Board of Equalization,
Appellee.

Case No: 15A 0156, 15A 0157, 15A 0158,
15A 0159

Decision and Order Affirming Colfax
County Board of Equalization

Background

1. The Subject Properties are 4 parcels of unimproved agricultural land, with legal descriptions of: 15A 0156: N 1/3 SE 1/4 SE 1/4 11-17-3, 13.40 ac; 15A 0157: S 2/3 of S 1/2 SW 1/4 12-17-3, 53.30 ac; 15A 0158: NE 1/4 SW 1/4 & N 1/3 S 1/2 S 1/4 Exc E of creek 12-17-3, 46.70 ac; 15A 0159: Pt N 1/2 NW 1/4 13-17-3, 24.8 ac, Colfax County, Nebraska.
2. The Colfax County Assessor (the County Assessor) assessed the Subject Properties at \$69,375 in 15A 0156; \$226,655 in 15A 0517; \$221,840 in 15A 0158; and \$85,675 in 15A 0159 for tax year 2015.
3. The Taxpayer protested these values to the Colfax County Board of Equalization (the County Board) and requested an assessed value of \$60,716 in 15A 0156; \$197,516 in 15A 0517; \$210,983 in 15A 0158; and \$77,385 in 15A 0159 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Properties was \$69,375 in 15A 0156; \$206,395 in 15A 0517; \$226,015 in 15A 0158; and \$85,675 in 15A 0159 for tax year 2015.
5. The Taxpayer appealed these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 17, 2016 at the River's Edge Convention Center, 265 33rd Ave., Columbus, Nebraska, before Commissioner Nancy J. Salmon.
7. Ronald W. Anderson was present at the hearing for Wel JG Investment Properties, LLC (Taxpayer).
8. Edmond E. Talbot III., attorney at law, 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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

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 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 2014 and 2015, the Army Corps of Engineers built a levee in Colfax County that crossed all four parcels that are the Subject Properties. The four parcels sit on the water side of the levee and the Taxpayer asserted that construction of the levee has blocked the primary drainage for this land. The presence of the levee also means that any dirt or grading work done on the land must be approved by the City of Schuyler and the Army Corps of Engineers.
17. The Taxpayer stated that the value of the land has been decreased due to the construction of the levee. He stated the reasons for the decrease are the increased chance of flooding

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.).

on the land, the presence of the levee, and the increased regulation on the land due to the levee.

18. The Taxpayer provided the Commission with several photographs showing the Subject Properties after recent rains.
19. The Taxpayer provided the Commission with a spreadsheet that illustrated his opinion that the Subject Properties with the levee should only increase 9% instead of 12% as other parcels in the County did. He stated that properties with the levee should be valued at approximately 3% less than other properties.
20. The Taxpayer did not provide the Commission with sales of other properties with the levee.
21. The Taxpayer did not provide the Commission with any other data or documentation supporting his opinions of value.
22. The County Assessor provided the Commission with several sales of parcels that had issues of flooding. It was her opinion that the Subject Properties were comparable to the sales because some were located by Shell Creek and Maple Creek. It is noted that the four comparable sales ranged in sale price from \$6,246 per acre to \$9,000 per acre.
23. 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.
24. The Taxpayer has not 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 affirmed.

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: \$69,375 in 15A 0156; \$206,395 in 15A 0517; \$226,015 in 15A 0158; and \$85,675 in 15A 0159 for tax year 2015.
3. This Decision and Order, if no further action is taken, shall be certified to the Colfax County Treasurer and the Colfax 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 June 28, 2016.

Signed and Sealed: June 28, 2016.

Nancy J. Salmon, Commissioner