

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Don L. Bell,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case No: 14A 086

Decision and Order

For the Appellant:

Don L. Bell & Ann J. Bell,
Pro Se

For the Appellee:

Matthew Kiernan,
Deputy Madison County Attorney

The appeal was heard before Commissioners Keetle and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 160 acre agricultural parcel located in Madison County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Madison County Assessor determined that the assessed value of the Subject Property was \$857,301 for tax year 2014. Don L. Bell and Ann J. Bell (the Taxpayers) protested this assessment to the Madison County Board of Equalization (the County Board) and requested an assessed valuation of \$628,249. The Madison County Board determined that the assessed value for tax year 2014 was \$857,301.¹

The Taxpayers appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of certain exchanged exhibits and the Commission did not receive certain exhibits on objection from the County. The Commission held a hearing on March 9, 2016.

¹ E1

III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a County Board of Equalization, 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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁸

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

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 *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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 a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

“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.”¹³ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).
Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and

⁹ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.¹⁸

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”¹⁹

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.²⁰

B. Summary of the Evidence

The Taxpayers allege that the assessed value of the Subject Property should be reduced due to periodic flooding. A drainage way known as the north branch of Battle Creek runs through the north half of the Subject Property. The testimony before the Commission is that the north branch of Battle Creek is “farmed through” and crops are planted and harvested from the north branch. A drainage way known as the south branch of Battle Creek runs on the south side of the county road that runs along the southern edge of the Subject Property and then turns and runs across the southeast corner of the Subject Property. The south branch of Battle Creek was rechanneled to run along the southern edge of the county road years ago and it has accumulated silt and vegetation over the years. The evidence before the Commission is that Battle Creek may flood once every three to four years. When Battle Creek floods the south branch of Battle Creek rises above the county road and flows onto the Subject Property. When Battle Creek floods the taxpayer testified that the farm residue from other parcels of property are washed onto the Subject Property. The Taxpayers did not offer any evidence with which to quantify the impact of the periodic flooding of the Subject Property on the assessed value of the Subject Property.

¹⁸ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

The Taxpayers alleged that the comparable properties offered by the County Board were not comparable to the Subject Property because they did not have creeks running through or adjacent to them. The Taxpayers did not provide any comparable properties that had creeks running through or adjacent to them for the Commission to analyze when determining the actual value of the Subject Property.

The Madison County Assessor (the Assessor) testified that he was aware that the Subject Property periodically flooded when he determined the assessed value of the Subject Property. The Assessor testified that he had no comparable sales with comparable creeks running through them to use when valuing the Subject Property. The Assessor further testified that he had no other information or data from which to make an adjustment to the assessed value of the Subject Property Due to periodic flooding. The Assessor offered the Property Record Files for several properties utilized in assessing the Subject Property for tax year 2014.²¹ The Assessor testified that when assessing agricultural and horticultural property in Madison County he utilized sales and followed the directives and Rules and Regulations of the Department of Revenue.²² With regard to the north branch of Battle Creek running across the subject property the Assessor testified that he assessed that portion of the Subject Property with the surrounding land as directed by the Rules and Regulations of the Department of Revenue.²³

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

²¹ See, E5 through and including E17.

²² See, Title 330, Neb. Admin. Code, ch 14.

²³ Title 330, Neb. Admin. Code, ch 14 § 005.01D(2)

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Madison County Board of Equalization determining the value of the Subject Property for tax year 2014 is affirmed.²⁴
2. The assessed value of the Subject Property for tax year 2014 is \$857,301.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Madison County Treasurer and the Madison 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 2014.
7. This Decision and Order is effective for purposes of appeal on March 21, 2016.

Signed and Sealed: March 21, 2016.

Steven A. Keetle, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.

²⁴ Assessed 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.