

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cattle Rack Ranch,
Appellant,

v.

Nuckolls County Board of Equalization,
Appellee.

Case No: 14A 038

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

For the Appellant:

John D. Lange, Member
Pro Se

For the Appellee:

Timothy S. Schmidt,
Nuckolls County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 305.89 acre parcel located in Nuckolls 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 6.

II. PROCEDURAL HISTORY

The Nuckolls County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$550,360 for tax year 2014. Cattle Rack Ranch (the Taxpayer) protested this assessment to the Nuckolls County Board of Equalization (the County Board) and requested an assessed valuation of \$463,112. The County Board determined that the taxable value of the Subject Property for tax year 2014 was \$548,960.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing

¹ Exhibit 1.

Conference Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on July 9, 2015.

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

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).

consider all questions necessary to determine taxable value of property as it hears an appeal or 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

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).

for agricultural or horticultural purposes, including wasteland lying in or adjacent to and 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.²⁰

“Cropland is that part of an agricultural or horticultural parcel, normally used for the production of crops or rotation pasture. Cropland may be irrigated or dryland cropland.”²¹

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.²²

“Irrigated Cropland includes all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”²³ “Irrigable Lands are lands having soil, topographic, drainage, and climatic conditions favorable for irrigation and located in a position where a water supply is or can be made available.”²⁴

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale: ... (14) For agricultural land and horticultural land as defined in section 77-1359 which is within a class or subclass of irrigated cropland pursuant to section 77-1363, whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale price of the property. If data on current well capacity or current water availability is not available from a federal, state, or

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).

²¹ 350 Neb. Admin. Code, ch. 14 §002.21 (03/09).

²² 350 Neb. Admin. Code, ch. 14 §002.21A (03/09).

²³ 350 Neb. Admin. Code, ch. 14 §002.21B (03/09).

²⁴ 350 Neb. Admin. Code, ch. 14 §002.38 (03/09).

local government entity, this subdivision shall not be used to determine what constitutes a comparable sale.²⁵

B. Findings of Fact

Prior to the hearing, the parties notified the Commission of further stipulations reached by the parties. As a result of their stipulated agreement, what was left unresolved was the actual value of 36.14 acres which had been classified by the Assessor as irrigated land and which the Taxpayer asserted should have been classified as dryland.²⁶

John D. Lange, a Member of Cattle Rack Ranch, LLC, testified on behalf of the Taxpayer. He testified that the Taxpayer purchased the Subject Property in 2012. Lange testified that the 36.14 acres should be classified as dryland, and thus be assessed at a lower value than irrigated land, because of the reduced availability of surface water in 2013 and 2014. Lange testified that the Taxpayer had a surface water agreement wherein water could be diverted from the Bostwick Irrigation District in Nebraska (Bostwick) canal.²⁷ He asserted that under that agreement, only seven inches per acre foot was diverted to the Subject Property in 2013 and no water was diverted in 2014.²⁸ Lange testified that under the agreement with Bostwick the maximum amount of water available in any given year never exceeded 10 inches per acre foot. Lange asserted that no other surface water or well water was available to the Subject Property.

Lange further testified that because of the limited surface water availability in 2013 and the unavailability of any surface water in 2014 the terms of a Farm Lease between the Taxpayer and a Lessor were significantly affected for the contract period March 1, 2014 to February 28, 2015.

²⁵ Neb. Rev. Stat. §77-1371 (Cum. Supp. 2014). Neb. Rev. Stat. §77-1371(14) was not effective on January 1, 2014, the effective date for the assessment of the actual value of the Subject Property. Subsection 14 of Neb. Rev. Stat. §77-1371 was section 17 of 2014 Neb. Laws LB 1098, which was approved by the Governor on April 16, 2014. Section 17 of the bill had an operative date, and became law, three calendar months after the adjournment of the 2014 legislative session. See 2014 Neb. Laws LB 1098, Section 18. While Section 14 of Neb. Rev. Stat. §77-1371 is the current law regarding comparable sales of irrigated cropland with limited water availability, and even though the Taxpayer has requested that the Commission consider it as part of the evidence in this appeal (Exhibit 44), the Commission will not consider it as applied to this appeal because it was not law until after the effective date of this appeal.

²⁶ The parties agreed that 252.89 acres should have been classified as grassland at a value of \$1,125 per acre, that 7 acres should have been classified as waste at a value of \$115 per acre, that 6.86 acres should have been classified as dryland with a value of \$2,660 per acre, that 2 acres should be classified as road with no value, and that one acre should be classified as a farm home site with a value of \$7,500.

²⁷ See generally Exhibit 29.

²⁸ Lange also testified to his belief that no less than five inches per acre foot would be available to the Subject Property in 2015.

The Taxpayer offered two Farm Lease agreements into evidence.²⁹ Lange testified that for the 2013 growing season the Taxpayer was able to negotiate a much more profitable lease than was negotiated for 2014. The Lessor's cash rent for 2013, when surface water availability was seven inches per acre foot, was \$14,572.50.³⁰ Under the Farm Lease for 2014, the Lessor's cash rent was \$7,612.50.³¹ Lange testified to his belief that the lesser amount of cash rent in 2014 was directly due to the fact that the Lessee would not have the benefit of any surface water for 2014 crops.

Lange argued that an income approach should be used to value the Subject Property for tax year 2014 because of the limited water availability and based upon this lesser cash rent amount. However, neither the County Assessor nor the County Board was required to use the income approach to value agricultural land or horticultural land for tax year 2014.³² Further, other than the two Farm Lease Agreements, the Taxpayer provided no evidence that could be used to appropriately develop an income approach to value.³³ For example, the net operating income could not be determined because not all items of income and expenses were in evidence. Additionally, no evidence was offered regarding an estimated capitalization rate. Without these facts, an income approach to value the Subject Property cannot be appropriately determined or reviewed.

As to the Taxpayer's general assertion that since the availability of surface water was limited in 2013 and unavailable in 2014 the 36.14 acres should be assessed at a value less than irrigated land, the Commission notes that there was no evidence that sales of land with similar water availability limitations supported this assertion. As to the Taxpayer's assertion that the 36.14 acres should be classified as dryland rather than as irrigated, there was evidence that the land was primarily used for crop production *with* irrigation.³⁴ Since purchasing the Subject Property in 2012, the Taxpayer had purchased water rights from Bostwick and had entered into Farm Lease

²⁹ Exhibit 39:1-2.

³⁰ E39:1

³¹ E39:2.

³² See Neb. Rev. Stat. §77-112 (Reissue 2009).

³³ The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. See, *The Appraisal Institute, The Appraisal of Real Estate*, at 466 (13th ed. 2008). See, *The Appraisal Institute, The Appraisal of Real Estate*, at 460-461 (14th ed. 2013).

³⁴ Dryland cropland is land that is primarily used for crop production *without* irrigation. 350 Neb. Admin. Code, ch. 14 §002.21A (03/09)(emphasis added).

agreements whereby, as Lange testified, the Taxpayer, as Lessor, would receive greater cash rents when irrigated. Based upon the foregoing, the Commission finds there is sufficient evidence to conclude that the 36.14 acres were not primarily used for crop production without irrigation and it was appropriate that they were not classified as dryland.

The Nuckolls County Assessor, Susan Rogers, testified regarding the assessment of the Subject Property for tax year 2014. She explained that Nuckolls County had only one market area for agricultural land and horticultural land. Rogers also testified to her belief that all of the parcels that had agreements with Bostwick were classified as irrigated for tax year 2014. Rogers acknowledged that her assessment process for irrigated land did not distinguish between the irrigated lands that had Bostwick agreements plus a groundwater well from the irrigated land that had only Bostwick surface water availability. It may have been appropriate for the Assessor to classify as irrigable land the Subject Property and all other properties that did not have access to groundwater but had an agreement with Bostwick. Irrigable Lands are lands “having soil, topographic, drainage, and climatic conditions favorable for irrigation and located in a position where a water supply is or can be made available.”³⁵ However, Rogers testified that she did not have sufficient sales to justify making that distinction.

The record in this appeal does not support the Taxpayer’s basic assertion that the Subject Property, and other properties in Nuckolls County that have agreements with Bostwick but no access to well water, should be assessed at per acre values less than other properties in the County that are classified as irrigated. For example, there is no evidence suggesting that when properties similarly situated to the Subject Property sell that the price per acre is less than properties in the County with access to well water. We find there is no clear and convincing evidence that the valuation per acre of the 36.14 acres should not be the same as other irrigated acres in the County. We otherwise find that we should adopt the stipulated agreement by the parties and therefore reverse the determination of the County Board with respect to the other acres that were subject to the stipulation between the parties.

³⁵ 350 Neb. Admin. Code, ch. 14 §002.38 (03/09).

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption in favor of the determination of taxable value made by the County Board. The Commission also finds that there is clear and convincing evidence that the County Board’s determination of taxable value is arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the determination of the County Board is Vacated and Reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Nuckolls County Board of Equalization determining the value of the Subject Property for tax year 2014 is vacated and reversed.³⁶
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 513,438
<u>Improvement</u>	<u>\$ 6,905</u>
Total	\$ 520,343

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Nuckolls County Treasurer and the Nuckolls 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.

³⁶ 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.

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 July 22, 2015.³⁷

Signed and Sealed: July 22, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁷ 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.