

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rudolph E. & Mary Jane Vasko,
Appellant,

And

Centennial Lake Farm, LLC,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 12A 066 & 13R 192

Decision and Order Affirming the
Determinations of the Otoe County Board of
Equalization

Procedural Background

1. The Subject Property is a 141.85 acre rural parcel that was owned by Rudolph E. & Mary Jane Vasko as of January 1, 2012, and changed ownership to Centennial Lake Farm, LLC as of January 1, 2013. The legal description of the Subject Property is 22-8-13 LOT GL 4-5 S1/2 SW 1/4 AND GL LOT 2 NW 1/4 141.85 AC BELMONT.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$390,550 for both tax years 2012 and 2013.
3. The Taxpayer protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$156,920 for tax years 2012 and 2013.
4. The County Board determined that the taxable value of the Subject Property was \$390,550 for tax years 2012 and 2013.
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 June 12, 2014, at a Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Rudolph E. Vasko and Ted Vasko were present at the hearing on behalf of the Taxpayer.
8. David J. Partsch, Otoe County Attorney, John Palmtag, Deputy Otoe County Attorney, Therese Gruber, Otoe County Assessor, and Christi Smallfoot, Deputy Otoe County Assessor were present for the County Board.

Applicable Law

9. The Commission's review of the determination of the County Board is de novo.¹
10. 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."² 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."³
11. 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.⁴
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵
13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁶
14. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁷
15. Nebraska Statutes define "agricultural land and horticultural land" as "a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes."⁸
16. A parcel is, "a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section."⁹
17. In *Agena v. Lancaster County Board of Equalization*, the Nebraska Supreme Court held that when determining the assessment of "agricultural land and horticultural land," an assessment official must evaluate the primary use of the entire parcel and not the uses of portions of the parcel.¹⁰ The *Agena* decision was followed by legislation which excluded

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 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).

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

³ *Id.*

⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ 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).

⁷ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

⁸ Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

⁹ Neb. Rev. Stat. §77-132(1) (Reissue 2009).

¹⁰ *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 862-863, 758 N.W.2d 363, 373 (2008).

“land associated with a building or enclosed structure located on the parcel” from the primary use analysis.¹¹

18. Agricultural or horticultural purposes are defined as, “used for 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.”¹²
19. “Agricultural land and horticultural land” must be assessed at 75% of actual value.¹³
20. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴
21. The Commission has found no Nebraska law, whether in Statute, Rule and Regulation, or case law permitting the assessment of a parcel that does not qualify as “agricultural land and horticultural land” to include a portion of the parcel that is assessed at less than 100% of actual value even when that portion of the parcel is used for agricultural or horticultural purposes.
22. In order for land to be assessed as “agricultural land and horticultural land,” and therefore to be assessed at only 75% of actual value, an examination of the primary use of the entire parcel¹⁵ must indicate that the parcel, not just portions of the parcel, is primarily “used for agricultural or horticultural purposes.”¹⁶

Findings of Fact & Conclusions of Law

23. The County Assessor determined that the parcel is not “agricultural land and horticultural land,” but instead determined that the parcel should be assessed as a recreational parcel.
24. The parcel contains a lake and surrounding area that is used for recreational activities including boating, picnicking, camping, and hunting.
25. Nebraska Department of Revenue Rules and Regulations specifically define lakes and ponds, such as the one located on the parcel, as a use that is not an agricultural or horticultural use.¹⁷
26. Besides the lake, other areas of the parcel are used for agricultural or horticultural purposes, including areas enrolled in CRP and portions designated for row crops.¹⁸ The

¹¹ Nebraska Laws LB777, § 1 (2008), amending Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-1359(2) (Reissue 2009).

¹³ See, Neb. Rev. Stat. §77-201(2) (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).

“Actual value of real property for purposes of taxation means the 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 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. Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ As discussed in paragraph 15 above, the entire parcel analysis first excludes “land associated with a building or enclosed structure located on the parcel” as required by Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

¹⁷ See, 350 Neb. Admin. Code, ch. 14 §005.01D (03/09).

¹⁸ See, Neb. Rev. Stat. §77-1359(2) (Reissue 2009).

testimony at the hearing indicated that these areas of the parcel are also used for recreational activities, including hunting.

27. The Commission finds that the primary use of the parcel is recreational and not for agricultural or horticultural purposes.
28. The Commission finds that the County Board's determination that the Subject Property should be classified as a recreational parcel is reasonable and not arbitrary.
29. The Commission notes that the County Assessor assessed portions of the Subject Property that were used for agricultural or horticultural purposes at 75% of actual value, with a total assessed value for the Subject Property of \$390,550 for both tax years.
30. The Commission finds that the valuation of a portion of the Subject Property, a recreational parcel, as though it were "agricultural land and horticultural land," or as a parcel that is primarily used for agricultural or horticultural purposes, is contrary to the requirement that parcels that are not "agricultural land and horticultural land" be assessed at 100% of actual value.¹⁹
31. However, there is no evidence that the Taxpayer was given notice in these proceedings of a higher value than \$390,550 for the Subject Property for either tax year. The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at an amount higher than previously noticed to the Taxpayer by the Otoe County Assessor, County Board, or Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.²⁰
32. The Commission notes that the County Board did not assert during the hearing that the taxable value should be increased above that value previously noticed, and that no notice as would be required by the Commission's Rules and Regulations was ever perfected. Therefore, the Commission finds that it cannot set the taxable value of the Subject Property at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator in these appeals.
33. Therefore, the Commission finds that the actual value of the Subject Property for tax year 2012 and 2013 is \$390,550.
34. Competent evidence was adduced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
35. Sufficient, clear and convincing evidence was adduced that the determination of the County Board is unreasonable or arbitrary, but since no notice of a higher value was given to the Taxpayer the decision of the County Board should be affirmed.

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁰ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Otoe County Board of Equalization determining the value of the Subject Property for tax year 2012 and 2013 is affirmed.
2. The taxable value of the Subject Property for tax years 2012 and 2013 is \$390,550.
3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 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 years 2012 and 2013.
7. This Decision and Order is effective on August 14, 2014.

Signed and Sealed: August 14, 2014

SEAL

Robert W. Hotz, Commissioner