

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Charles P. Starr,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 14A 176, 14A 177, & 14A 178

Decision and Order Affirming the Decisions  
of the Lancaster County Board of  
Equalization in 14A 176 & 14A 178

Decision and Order Reversing the Decision  
of the Lancaster County Board of  
Equalization in 14A 177

**Background**

1. The Subject Property consists of three parcels in rural Lancaster County, Nebraska. The parcel in Case No. 14A 176 consists of 67.9 acres. The parcel in Case No. 14A 177 is a 55.97 acre parcel, including a 2.02 acre farm home site with a residence. The parcel in Case No. 14A 178 contains 19.3 acres. The legal descriptions of each parcel are found in the Case Files.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property in Case No. 14A 176 at \$107,500 for tax year 2014. The Taxpayer protested this assessment to the Lancaster County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property was \$107,500 for tax year 2014.
3. The County Assessor assessed the Subject Property in Case No. 14A 177 at \$289,100 for tax year 2014. The Taxpayer protested this assessed value to the County Board. The County Board determined that the taxable value of the Subject Property was \$289,100 for tax year 2014.
4. The County Assessor assessed the Subject Property in Case No. 14A 178 at \$19,600 for tax year 2014. The Taxpayer protested this valuation to the County Board. The County Board determined that the taxable value of the Subject Property was \$19,600 for tax year 2014.
5. The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 13, 2015, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.

7. Charles P. Starr was present at the hearing.
8. Jeff Johnson, an employee of the 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.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

## Findings of Fact & Conclusions of Law

16. The parties agreed that in Case No. 14A 177, the taxable value attributed to the 2.02 acre farm home site should be \$40,000, and the taxable value attributed to the residential improvements should be \$166,967.<sup>9</sup>
17. The parties also agreed to the number of acres classified as grassland<sup>10</sup> and as wasteland<sup>11</sup> in the property record cards for each of the three appeals.<sup>12</sup>
18. The Taxpayer disputes only the taxable value of the acres classified as wasteland in each of the three appeals.
19. The parties agreed that for tax year 2012 the County Assessor valued all wasteland in Lancaster County at \$100 per acre, and that beginning tax year 2013 the County Assessor assessed wasteland at \$1,000 per acre. Jeff Johnson asserted that the Deputy County Assessor had determined the market value of wasteland based upon sales of agricultural land and horticultural land in other counties.
20. All agricultural land and horticultural land in Lancaster County was assessed as special valuation land for tax year 2014.<sup>13</sup>
21. In determining the special valuation for its agricultural land and horticultural land for tax year 2014, the County Assessor utilized sales of agricultural land and horticultural land from the counties of Cass, Gage, Johnson, Otoe, Saunders, and Saline.<sup>14</sup>
22. Charles Starr provided a map of Nebraska with handwritten notes which he said indicated the assessed values of wasteland in the eight counties which are contiguous to Lancaster

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<sup>9</sup> A farm home site is “land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision.” *Neb. Rev. Stat. 77-1359(3)* (2014 Cum. Supp.).

<sup>10</sup> 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 bromegrass, other introduced grasses, and native grasses used for grazing or mowed for hay.... 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. See 350 Neb. Admin. Code, Ch. 14 §002.31.

<sup>11</sup> See 350 Neb. Admin. Code, Ch. 14 §002.05. “Agricultural land and horticultural land is a parcel of land primarily used for agricultural or horticultural purposes. This includes wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.” See also 350 Neb. Admin. Code, Ch. 14 §002.54. “Wasteland includes land that cannot be used economically and [is] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland.”

<sup>12</sup> The breakdown of the number of grassland acres and wasteland acres is shown in the property record card for each Subject Property parcel in each appeal.

<sup>13</sup> See 2014 Reports & Opinions for Lancaster County, issued by the Property Tax Administrator, Exhibit 55. The Commission is authorized to take notice of the Reports and Opinions of the Property Tax Administrator as contained in exhibits from Statewide Equalization proceedings. See also, *Neb. Rev. Stat. §77-1344(1)*: “Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land.”

<sup>14</sup> 2014 Reports & Opinions of the Property Tax Administrator, Lancaster County, p. 23.

County, including Butler, Saunders, Seward, Cass, Saline, Otoe, Gage, and Johnson counties. Starr stated that he had made phone calls to the offices of the County Assessor for each of these counties to compile this data. The phone calls were made in 2015 and the data provided was the assessed value per acre of wasteland for tax year 2015. Per Starr, the offices of the County Assessors of six of the counties reported an assessed value of wasteland for tax year 2015 at \$100 per acre. Further, according to Starr, the office of the County Assessor of Johnson County reported a wasteland assessment for tax year 2015 of \$120 per acre, and the office of the County Assessor of Butler County reported a wasteland assessment for tax year 2015 of \$400 per acre.

23. Starr provided the property record cards for the three Subject Property parcels but did not provide any property record cards of sales of other properties in any of the counties contiguous to Lancaster County.
24. Since the assessment values were provided to Starr by telephone by the offices of the County Assessors listed above, and because the assessed values were for tax year 2015, the Commission cannot find that there is clear and convincing evidence that the County Board's determination that wasteland in Lancaster County should have a taxable value of \$1,000 per acre for tax year 2014 was arbitrary or unreasonable.
25. In Case No. 14A 176 and 14A 178, 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. In Case No. 14A 176 and 14A 178, the Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decisions of the County Board should be affirmed.
26. In Case No. 14A 177, 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. In Case No. 14A 177, the Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decisions of the County Board should be vacated and reversed.

## **ORDER**

### **IT IS ORDERED THAT:**

1. The Decisions of the County Board determining the taxable value of the Subject Property for tax year 2014 in Case Nos 14A 176 and 14A 177 are affirmed.
2. The taxable value of the Subject Property for tax year 2014 in Case No. 14A 176 is \$107,500.
3. The taxable value of the Subject Property for tax year 2014 in Case No. 14A 178 is \$19,600.
4. The Decision of the County Board determining the taxable value of the Subject Property for tax year 2014 in Case Nos 14A 177 is vacated and reversed.

5. The taxable value of the Subject Property for tax year 2014 in Case No. 14A 177 is:

Agricultural Land	\$ 47,900
Home Site	\$ 40,000
<u>Residential Improvements</u>	<u>\$166,967</u>
Total	\$254,867

6. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each Party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax year 2014.
10. This Decision and Order is effective on August 20, 2015.

Signed and Sealed: August 20, 2015

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Robert W. Hotz, Commissioner

