

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lynn H. Plambeck,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13A 022

Decision and Order Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The 87.27-acre unimproved agricultural parcel under appeal, which is referred to herein as the “Subject Property,” is located in Douglas County, Nebraska. The Subject Property’s legal description is as follows: LANDS SEC-TWN-RGE 09-16-10 -EX IRR NTHLY 63.4 FT NW COR- NE 1/4 W OF RIVER & -EX IRR W 40 FT & PT FOR HWY RWY & PT FOR LTS 1 & 2 NILSSONS ADD- N 1/2 NW 1/4.
2. The Douglas County Assessor (herein referred to as the “County Assessor”) assessed the Subject Property at \$246,990 for tax year 2013.
3. Lynn H. Plambeck (herein referred to as the “Taxpayer”), protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$246,990 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board for tax year 2013 to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on May 22, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference Room 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Lynn H. Plambeck appeared at the hearing.
8. Stan Mlotek, an Appraiser employed by the Douglas County Assessor’s Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File (“PRF”) contained in the 2013 Assessment Report submitted by the County Board at the hearing and the “Valuation Notice” submitted by the Taxpayer indicate that the \$246,990 determination for tax year 2013 consists of the following value components: (1) River Greenbelt Land - \$2,308 (11.54 acres x \$200 per acre = \$2,308); (2) Dry Greenbelt Unimproved Land - \$232,380 (64.55 acres x \$3,600 per acre = \$232,380); and (3) Timber Greenbelt Unimproved Land - \$12,298 (11.18 acres x \$1,100 per acre = \$12,298).
10. The Taxpayer did not dispute the \$3,600 per acre valuation applied to the Subject Property’s 64.55 acres of Dryland. The Taxpayer asserted that the Subject Property’s 11.54 acres of River Land should be valued at zero because it was underwater and not productive farm ground for tax year 2013 purposes. The Taxpayer also asserted that the

Subject Property's 11.18 acres of Timber Land should be valued as Wasteland because it was "swampy" and subject to flooding and land erosion.

11. In addition to his statements, the Taxpayer submitted the following documents at the hearing before the Commission: (1) "Valuation Notice" issued by the County Assessor; and (2) an aerial "1987 – 1988 Photograph" of the Subject Property.
12. The County Board's Assessment Report contains the following: (1) PRFs for the Subject Property and three alleged comparable properties; (2) an aerial map depicting the acres assigned to categories denoted as Dry Land, Grass/Timber Land, and River Land (also referred to herein as Accretion Land); and (3) information regarding the County Assessor's valuation of agricultural land, stating in pertinent part that "[t]he land has been valued according to the methodologies set by the State of Nebraska."
13. The Assessment Report indicates that the Subject Property was "physically inspected" by the County Assessor's Office on February 8, 2012. As a part of this inspection, the Assessment report indicates that the County Assessor's Office relied on "pictures taken [in December] 2010 to verify that the property should have the agricultural designation." The County's Appraiser stated that this inspection supported the County Assessor's opinion of value for the Subject Property for tax year 2013, which was relied upon by the County Board.

STANDARD OF REVIEW

14. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "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."²
15. 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
16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ 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).

² *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).

GENERAL VALUATION LAW

18. 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
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸
20. "Actual value, market value, and fair market value mean exactly the same thing."⁹
21. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.¹⁰
22. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
23. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
24. Agricultural and horticultural land is a distinct class of real property which may be taxed at a different proportion of actual value as compared to all other classes of real property without violating principles of equalization under the Nebraska Constitution.¹³ Acting under this constitutional authority, the Legislature has determined that agricultural and horticultural land should be taxed at only 75% of actual value.¹⁴ All other classes of real property (commercial and residential property) are taxed on 100% of actual value.¹⁵
25. Nebraska Statutes section 77-112 defines actual value as follows:

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 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.¹⁶

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.).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ See, *Krings v. Garfield County Board of Equalization*, 835 N.W.2d 750, 286 Neb. 352 (2013).

¹⁴ See, Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2009).

VALUATION ANALYSIS

26. The Taxpayer asserted that the Subject Property's 11.54 acres of River Land should be valued at zero because it was underwater and not productive farm ground for tax year 2013 purposes. The Taxpayer also asserted that the Subject Property's 11.18 acres of Timber Land should be valued as Wasteland because it was "swampy" and subject to flooding and land erosion.
27. The County's Appraiser, Mr. Mlotek, stated that the County Assessor valued all Douglas County River Land (also known as Accretion Land) and Timber Land similarly for tax year 2013.
28. Accretion Land is subject to property taxation in Nebraska as agricultural land.¹⁷ The Nebraska Administrative Code defines Accretion Land as follows: "Accretion Land is the increase of land by the gradual deposit of water borne solid materials. Accretion land areas may vary in size as the associated body of water either raises or lowers, or as a stream or river changes its channel. It is the opposite of erosion."¹⁸ Accretion land includes, "land that has been formed by alluvial deposits associated with a body or stream of water.... Accretion land can be classified into any agricultural use category."¹⁹
29. The Commission finds that it was not unreasonable or arbitrary for the County Board to assess the Subject Property's Accretion Land for tax year 2013 at a value greater than zero. The Commission notes that the County's Appraiser stated that Accretion Land is valued at \$50 per acre for tax year 2015 rather than the \$200 per acre assessment for tax year 2013.
30. Timber Land is also subject to property taxation in Nebraska as agricultural land.²⁰ The Nebraska Administrative Code defines Timber Land as follows for purposes of property taxation as agricultural or horticultural land: "[L]and which is wooded by nature or humans and consisting of a dense growth of trees and underbrush such that it is not suitable for grazing."²¹
31. Wasteland is another category subject to property taxation in Nebraska as agricultural land.²² The Nebraska Administrative Code defines Wasteland as follows:

Wasteland includes land that cannot be used economically and are [sic] 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

¹⁷ See, Neb. Rev. Stat. §77-201 (Reissue 2009); Neb. Rev. Stat. §77-1359 (2014 Cum. Supp.); Neb. Rev. Stat. §77-1363 (Cum. Supp. 2014); Title 350, Neb. Admin. Code, ch. 14, §004.05 (3/15/09) ("The State of Nebraska is unique in its recognition of the riparian rights of individuals to own land lying under water. **Accretion land can be classified into any agricultural use category.**") (emphasis added).

¹⁸ Title 350, Neb. Admin. Code, ch. 14, §002.02 (3/15/09)

¹⁹ Title 350, Neb. Admin. Code, ch. 14, §004.05 (3/15/09).

²⁰ See, Neb. Rev. Stat. §77-201 (Reissue 2009); Neb. Rev. Stat. §77-1359 (2014 Cum. Supp.); Neb. Rev. Stat. §77-1363 (Cum. Supp. 2014); Title 350, Neb. Admin. Code, ch. 14, §004.04G (3/15/09) (Timber Land included under definition of classes of agricultural or horticultural land).

²¹ Title 350, Neb. Admin. Code, ch. 14, §002.29 (3/15/09).

²² See, Neb. Rev. Stat. §77-201 (Reissue 2009); Neb. Rev. Stat. §77-1359 (2014 Cum. Supp.); Neb. Rev. Stat. §77-1363 (Cum. Supp. 2014); Title 350, Neb. Admin. Code, ch. 14, §004.04D (3/15/09) (Wasteland included under definition of classes of agricultural or horticultural land).

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.²³

32. The Commission did not receive clear and convincing evidence that the 11.18 acres categorized by the County as Timber Land is without economic value or use potential for purposes such as recreation. The Commission finds that it was not unreasonable or arbitrary for the County Board to assess 11.18 acres of the Subject Property as Timber Land rather than Wasteland for tax year 2013.
33. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's \$246,990 determination was unreasonable or arbitrary for tax year 2013.

CONCLUSION

34. 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.
35. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board was unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$246,990.
3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 2013.
7. This Decision and Order is effective on June 26, 2015.

Signed and Sealed: June 26, 2015.

Thomas D. Freimuth, Commissioner

²³ Title 350, Neb. Admin. Code, ch. 14, §002.54 (3/15/09).