

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

Larry D. Stuckey,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 14A 023

Decision and Order Affirming Otoe  
County Board of Equalization

Background

1. A Single Commissioner hearing was held on February 16, 2016, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Nancy J. Salmon.
2. Larry D. Stuckey was present at the hearing on behalf of himself (Taxpayer).
3. John Palmtag, Deputy Otoe County Attorney, was present for the County Board of Equalization (the County Board).
4. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$499,430 for tax year 2014.
5. The Taxpayer protested this value to the Otoe County Board of Equalization and requested an assessed value of \$247,020 for tax year 2014.
6. The County Board determined that the taxable value of the Subject Property was \$499,430 for tax year 2014.
7. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
8. The Subject Property is an unimproved vacant recreation parcel, with a legal description of: N ½ NE ¼ & SE ¼ NE ¼ 2-9-12, 158.33 acres, Otoe County, Nebraska.

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>

<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).

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>
16. “Recreational shall mean all parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.”<sup>9</sup>

#### Findings of Fact & Conclusions of Law

17. The Taxpayer asserted that the property is on a minimum maintenance road and parts of it are only accessible by ATV or 4 wheel drive vehicle and parts of it are only accessible on foot. There are 34 acres tillable and 4 acres of CRP ground. He asserted that the Subject Property is chopped up with deep ravines. He asserted that there was no potential for housing on the Subject Property. The Taxpayer did not quantify what effect these faults would have on the market value of the Subject Property.
18. The Taxpayer asserted that assessed valuation on the Subject had increased every year since 2011.

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<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.).

<sup>9</sup> Title 350, Chapt. 10, §001.05E.

19. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>10</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>11</sup>
20. The Taxpayer provided the Commission with an FSA map showing the tillable acres and CRP acres. He asserted that there was no economic use for the remaining 120.33 acres. He did state that he, his son, and grandson had hunted on the remaining acres, but he has not leased the property for hunting.
21. The Assessor stated that she began a review of the recreational land in Otoe County and after a review of the Subject Property, it was her opinion that the predominant use of the parcel is recreational. She valued the property using sales of recreational lands in Otoe County. She stated that the valuation on 45.76 acres was being used as agricultural land and valued at 75% of market value.
22. In *Agena v. Lancaster County Board of Equalization*, the Nebraska Supreme Court held that when determining how a parcel of agricultural land and horticultural land is primarily used, an assessment official must assess the parcel based upon the primary use of the entire parcel and not independently assess the uses of the various portions of the parcel.<sup>12</sup> The *Agena* decision was followed by legislation in 2008 and 2012, both amending the definition of "agricultural land and horticultural land" in Section 77-1359.<sup>13</sup> The 2008 legislation excluded "any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel" from the "primarily used" analysis.<sup>14</sup> However, the 2012 legislation revised what is excluded from the "primarily used" analysis so that only the "land associated with a building or enclosed structure located on the parcel" is excluded.<sup>15</sup>
23. Applicable Rules and Regulations define the term "primarily used" as "the use of the land is mainly agricultural or horticultural."<sup>16</sup> The term "mainly" is not defined in Nebraska law. However, "mainly" is defined elsewhere in relevant part as, "in the principal respect: for the most part: chiefly."<sup>17</sup> Regarding the "primarily used" analysis for a parcel, Nebraska law does not make any one factor determinative. Therefore, the determination of whether a parcel is primarily used for agricultural or horticultural purposes must be based on the totality of the evidence, including any relevant factors.
24. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>
25. The Subject Property was not in common ownership or management with land used for agricultural or horticultural purposes for the tax year at issue in this appeal. The

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<sup>10</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>11</sup> *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>12</sup> *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 862-863, 758 N.W.2d 363, 373 (2008).

<sup>13</sup> See 2008 Neb. Laws, LB777, § 1, and 2012 Neb. Laws, LB750, §1.

<sup>14</sup> See 2008 Neb. Laws, LB777, § 1, amending Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

<sup>15</sup> See 2012 Neb. Laws, LB750, § 1, amending Neb. Rev. Stat. §77-1359(1) (2014 Cum. Supp.).

<sup>16</sup> Title 350 Neb. Admin. Code, ch 14 §002.56 (03/15/2009).

<sup>17</sup> *Webster's Third New International Dictionary*, Merriam-Webster, Inc. (2002), p. 1362.

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

classification of the Subject Property is therefore limited to an examination of the Subject Property itself.

26. The Commission also finds it significant that a majority of the acres of the Subject Property are not used for agricultural or horticultural purposes.
27. 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.
28. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$499,430
Total	\$499,430

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 (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 on February 18, 2016.

Signed and Sealed: February 18, 2016

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Nancy J. Salmon, Commissioner