

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

Rasser Farms, Inc,  
Appellant,

v.

Webster County Board of Equalization,  
Appellee.

Case Nos: 15A 0127, 15A 0128, 15A 0129,  
15A 0130, 15A 0131 & 15A 0132

Decision and Order Affirming Webster  
County Board of Equalization

1. A Single Commissioner hearing was held on July 13, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J. Salmon.
2. Lizabeth L. Rasser was present at the hearing for the Taxpayer.
3. Sara Bockstadter, Webster County Attorney, was present for the County Board.
4. Sonja Krueger, Webster County Assessor was also present.

**Background**

5. The Subject Property consists of six parcels of agricultural land, with legal descriptions as follows: Case 15A -127: W ½ W ½ S of RR Tracks less W 20 Ac, S 260' of NE ¼ NW ¼, SE ¼ NW ¼, NE ¼ SW ¼, NW ¼ SE ¼, Gov Lots 1, 2, 4 & N ½ Lot 3 Less a tract in 3-1-10 cont. 250 acres; Case 15A 0128: Lots 3 & 4 & Pt Lots 5 & 7 & lying N of RR tracks less a 5.07 Ac tr in NE ¼ NW ¼ 5-1-10 cont. 86.91 acres; Case 15A 0129: 69.91 ac in NE ¼ & E ½ NW ¼ less that part SW of the irrigation ditch & Lot 1 in SE ¼ 6-1-10 cont. 215.71 acres; Case 15A 0131: W ½ 31-2-11 cont. 315.20 acres; Case 15A 0130: SE ¼ 1-1-11 cont. 160 acres; and Case 15A 0132: N ½ NW ¼ 36-2-12 cont. 80.33 acres, all in Webster County, Nebraska.
6. The Webster County Assessor (the County Assessor) assessed the Subject Property at \$862,755 in Case 15A 0127, \$445,240 in Case 15A 0128, \$413,425 in Case 15A 0129, \$720,305 in Case 15 A 0130, \$947,345 in Case 15A 0131, and \$273,545 in Case 15A 0132 for tax year 2015.
7. The Taxpayer protested this value to the Webster County Board of Equalization (the County Board) and requested an assessed value of \$685,985 in Case 15A 0127; \$341,200 in Case 15A 0128; \$385,940 in Case 15A 0129; \$643,255 in Case 15A 0130; \$819,445 in Case 15A 0131; and \$238,220 in Case 15A 0132 for tax year 2015.
8. The County Board determined that the taxable value of the Subject Property was \$849,795 in Case 15A 0127; \$453,525 in Case 15A 0128; \$589,170 in Case 15A 0129; \$720,305 in Case 15A 0130; \$971,950 in Case 15A 0131; and \$279,225 in Case 15 A 0132 for tax year 2015.
9. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

## Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
12. 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>
13. 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>
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
15. 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>
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact & Conclusions of Law

17. The Taxpayer's sole contention in these appeals concerns the classification of the Subject Property as irrigated land. Its representative contends that because of the limited water that the Subject Property receives on an annual basis, the Subject Property should be placed in a subclass of irrigated property as provided by regulations of the Nebraska Department of Revenue, Property Assessment Division.

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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.).

18. In support of its request that the Subject Property be placed in a sub-classification of irrigated land, the Appellant's representative stated that two of the parcels receive irrigation water from Elm Creek which is regulated by the Nebraska Department of Natural Resources. The remaining parcels are irrigated with water provided by the Bostwick Irrigation District. She asserted that the quantity of water received for irrigation of the Subject Property from these sources not reliable like groundwater irrigated land. She provided the Commission with two examples of Opening/Regulating Notices showing the restrictions placed upon the Subject Property for irrigation each year. She stated that there have been some years where they were unable to pump any water due to arid conditions. Because of the limited irrigation available, she requested that the Subject Property be placed within a subclass of irrigated land, as allowed by Property Assessment Division regulation. The applicable regulation provides that a sub-classification may be recognized in order to achieve proportionate market value. The regulation states that examples of the sub-classification include "irrigation from sources other than the parcel being assessed shall be classified as other properties by soil type; however, the market value should be based on transactions of irrigated land which is under the same limitation as to availability of water source for irrigation."<sup>9</sup>
19. The County Assessor stated that she utilizes the sales comparison approach when valuing agricultural land, and that although she will be willing to create a sub-class if necessary, Webster County has not had any sales of agricultural land with irrigation from surface water from the Bostwick Irrigation District or that applies water from Elm Creek. Although the taxpayer described a sale of 320 acres, that sale occurred after January 16, 2016 and could not be considered for the Taxpayer's 2015 assessment. The Assessor indicated that she was unaware of the circumstances of that sale, but would follow up and review it to determine if an adjustment should be made for 2017.
20. The record in these appeals does not support the Taxpayer's assertion that the Subject Property should be included in a sub-class of agricultural land where surface water irrigation is subject to limitations. In the event that the Assessor becomes aware of sales of property with similar issues and that such sales can be utilized to quantify a difference in value, creation of such a sub-classification may well be considered.
21. 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:

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<sup>9</sup> 350 Neb. Admin. Code , Chap. 14 §006.04C(1).

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 in case 15A 0127 is \$849,795.
3. The taxable value of the Subject Property for tax year 2015 in case 15A 0128 is \$453,525.
4. The taxable value of the Subject Property for tax year 2015 in case 15A 0129 is \$589,170.
5. The taxable value of the Subject Property for tax year 2015 in case 15A 0130 is \$720,305.
6. The taxable value of the Subject Property for tax year 2015 in case 15A 0131 is \$971,950.
7. The taxable value of the Subject Property for tax year 2015 in case 15A 0132 is \$279,225.
8. This Decision and Order, if no further action is taken, shall be certified to the Webster County Treasurer and the Webster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
9. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
10. Each Party is to bear its own costs in this proceeding.
11. This Decision and Order shall only be applicable to tax year 2015.
12. This Decision and Order is effective on July 25, 2016

Signed and Sealed: July 25, 2016.

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Nancy J. Salmon, Commissioner