

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Betty J Peterson,
Appellant,

v.

Greeley County Board of Equalization,
Appellee.

Case No: 15A 0139

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is an unimproved agricultural parcel, with a legal description of: Part of SE¼ 24-18-11 West of RR Tracks, 61.9 Acres, Greeley County, Nebraska.
2. The Greeley County Assessor (the County Assessor) assessed the Subject Property at \$309,450 for tax year 2015.
3. The Taxpayer protested this value to the Greeley County Board of Equalization (the County Board) and requested an assessed value of \$247,500 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$309,450 for tax year 2015.
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 13, 2016, at the Ramada Inn Conference Center, Columbus, Nebraska, before Commissioner Nancy J. Salmon.
7. Mr Robert Peterson was present at the hearing for the Taxpayer.
8. Cindy Bassett, Greeley County Attorney, 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
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.”³ That presumption “remains until

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

² 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).

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

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

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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer contends that although the Subject Property is assessed as having 61.9 acres of farmable irrigated land, it actually contains 59.2 acres due to the existence of an abandoned railroad consisting of 2.7 acres. She therefore asserts that the Subject Property’s valuation should be based upon 59.2 acres of farmable land and 2.7 acres of waste land.
17. The Commission was provided with a copy of the Lower Loup NRD Certification showing 61.9 acres of irrigated land. However, it appears that that certification was based upon records of the Assessor. The Taxpayer provided a copy of the Farm Service Agency certification showing 59.2 acres of farmable land. In addition, the Subject Property is subject to a lease indicating 60 acres of farmable land. Based upon the submitted documentation, the Taxpayer has presented competent evidence that the total farmable area is 59.2 acres.
18. The Taxpayer also asserts that the Subject Property should be valued under the Income Approach rather than the Market or Sales Approach. Actual value is defined by Nebraska Statute as:
[T]he 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

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).

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.).

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.⁹

19. Valuation of agricultural and horticultural land is also addressed in the Nebraska Department of Revenue Regulations. See, Title 350, N.A.C. Chap. 14, §006. The regulations state that both a market (sales comparison) approach or an income approach may be used to determine actual value of agricultural or horticultural land, but “Reconciliation of final value is based on the appropriateness of the approach to value **(market value is preferred in the valuation of agricultural land)** and the availability and reliability of the information used in each approach.¹⁰
20. The Commission finds that the sales and market approach best determines actual value of the Subject Property.
21. With respect to the sales and market approach utilized by the Assessor, the Taxpayer contends that the sales utilized by the Assessor all pertained to pivot irrigated properties whereas the Subject Property can only be irrigated by gravity. She did not provide documentation to quantify the differences between gravity irrigated and pivot irrigated property.
22. The Agricultural Land and Horticultural Land Regulations define irrigated cropland as including “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”¹¹
23. The Commission finds that the Taxpayer has not presented competent evidence to rebut the presumption of correctness of the County Board with respect to this issue.
24. Lastly, the Taxpayer asserts that the Subject Property has not been equalized with other like property in the market area in which it is located. In support of her argument, the Taxpayer provided the Commission with a property record card for a parcel located in the same section as the Subject Property. She contends that that property was valued at \$4,584 per acre, and that her property should be valued at the same amount.
25. A review of the comparable property record card submitted by the Taxpayer indicates that a significant portion of the comparable property contained land classified as 1A and valued that land at \$5,050 per acre. The Subject Property contains 47.32 acres of 1A land, and it is also valued at \$5,050 per acre. The remaining acres are valued appropriately.
26. The Commission finds that the Taxpayer has not presented competent evidence to rebut the presumption existing in favor of the County Board with respect to the issue of equalization.

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁰ 350 Neb. Admin. Code, Chap 14, §006.03 (Emphasis added).

¹¹ 350 Neb. Admin. Code, Chap 14, §002.21B.

27. 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 with respect to the number of irrigated acres on the Subject Property.
28. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable with respect to the number of irrigated acres, and the decision of the County Board should be vacated and reversed.

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 2015, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

| | | | |
|--|--------------------------|--|----------------|
| | Land | | |
| | 2.7 Waste acres@ \$200 | | \$540 |
| | 44.62 1A acres@ \$5,050 | | \$225,331 |
| | 14.10 2A1 acres@ \$4,870 | | \$68,667 |
| | .48 acres@ \$3,790 | | <u>\$1,820</u> |
| | Total | | \$296,358 |

3. This Decision and Order, if no further action is taken, shall be certified to the Greeley County Treasurer and the Greeley 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 2015.
7. This Decision and Order is effective on June 24, 2016.

Signed and Sealed: June 24, 2016

Nancy J. Salmon, Commissioner