

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gordon M. Dibbern,
Appellant,

v.

Hall County Board of Equalization,
Appellee.

Case No: 14A 034

Amended Decision and Order Affirming the
Determinations of the Hall
County Board of Equalization
(Correction County Assessor/Treasurer)

1. A Single Commissioner hearing was held on August 3, 2015, at Hall County Courthouse, 121 S. Pine Street, Grand Island, Nebraska, before Commissioner Salmon.
2. Gordon M. Dibbern (the Taxpayer) was present at the hearing.
3. Jack Zitterkopf, Hall County Attorney, was present for the Hall County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is unimproved agricultural land. The legal description of the Subject Property is: CAMERON TWP PT SE ¼ 20-11-12 147.86 acres, Hall County, Nebraska.

Background

5. The Hall County Assessor (the Assessor) assessed the Subject Property at \$227,519 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$179,519 for tax year 2014.
7. The Hall County Board determined that the taxable value of the Subject Property was \$227,519 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. 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

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).

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer asserted that the actual value of the Subject Property was negatively affected by an easement he entered into with the Central Platte Natural Resources District for the construction of a dry dam on approximately 71.05 acres of the Subject Property.
16. He asserted that the easement allowed for the construction, maintenance, repair, and operation of a floodway control dam and related structures.
17. The Taxpayer asserted that after completion of the dam, portions of the Subject Property flooded after two to three inches of rain. The Taxpayer provided photographs of the Subject Property in 2013 that show flooding of the cornfield and inhibited crop growth when the waters receded. The Taxpayer argued that the dam caused the flooding.
18. The Taxpayer asserted that the value of the Subject Property is directly related with the ability of the cropland to produce crops. Specifically, he asserted that prior to the construction of the dam he was able to produce approximately 160 bushels of corn per acre on the Subject Property. However, after the construction of the dam, he asserted that 71.05 acres of the Subject Property that flooded only produced 30 bushels per acre in 2013 and 50 bushels per acre in 2014. The Taxpayer asserted that because of this reduction in production capability the value of the Subject Property should be decreased by 48%.

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).

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.).

19. The County Assessor provided property record cards and land use maps of the Subject Property. She asserted that she assessed agricultural and horticultural land in Hall County using the sales comparison approach. She asserted that she was unaware of any sales of agricultural or horticultural land in the county that were comparable and included dry dams. She asserted that without any sales she could not verify what, if any, effect the dry dam had on the actual value of the Subject Property.
20. She further indicated that the referee for the County Board had recommended that a correction be made to the soil type and land use from 21.35 total acres of dryland to 70.85 total acres of dryland on the Subject Property. The County Assessor supplied a corrected property record card. If the corrections were made the assessed value of the Subject Property would increase to \$258,373.
21. The Taxpayer's calculation of the actual value of the Subject Property is not based on a commonly accepted mass appraisal technique. The actual value of real property for property tax purposes in Nebraska may be derived using the sales approach, the income approach, the cost approach, or any other commonly accepted appraisal technique.⁹ An owner of property is allowed to offer an opinion of value, but the weight the adjudicator gives to the opinion may be based on the rest of the evidence.
22. The Commission notes that the Taxpayer received consideration for the property rights transferred to the Central Platte Natural Resources District.
23. The Nebraska Court of Appeals reasoned that the rules and regulations promulgated by the Department of Revenue defined real property to include, "all privileges relating to real property[.]" and that the privileges were defined as "the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder."¹⁰ The Nebraska Court of Appeals also examined case law from other jurisdictions with similar state laws and held, "that the actual value of real property for tax purposes shall be the value which a willing buyer would be willing to pay for the fee simple interest."¹¹
24. The Taxpayer must be assessed for the simple interest even though a portion the rights and privileges associated with that estate has been transferred to another entity.
25. The Commission notes that applying the County Assessor's new opinion of value as based on the County Board's recommendation would result in an assessed value higher than previously noticed assessed values to the Taxpayer. There is no evidence that the Taxpayer was given notice in these proceedings of a higher value than \$227,519 for tax year 2014. The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax

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

¹⁰ Omaha Country Club v. Douglas County Board of Equalization, 11 Neb.App. 171, 645 N.W.2d 822, 829 (2002) (citing 350 Neb. Admin. Code, ch. 10 §001.01 (2000) and 350 Neb. Admin. Code, ch. 10 §01.01F (2000)). See also, 350 Neb. Admin. Code, ch 10 §002.18 (10/14) and 350 Neb. Admin. Code, ch 10 §002.18G (10/14)

¹¹ Omaha Country Club v. Douglas County Board of Equalization, 11 Neb.App. 171, 645 N.W.2d 822, 829 (2002).

Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value in the form of a pleading.¹² The Commission notes that no notice as required by the Commission's Rules and Regulations was ever perfected. The Commission finds that it cannot set the taxable value of the Subject Property at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator in these appeals. Therefore, the Commission finds that the actual value of the Subject Property is \$227,519.

26. 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.
27. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Hall County Board of Equalization determining the taxable values of the Subject Property for tax year 2014 is Affirmed.
2. The taxable value of the Subject Property in Case No. 14A 034 for tax year 2014 is \$227,519.
3. This Amended Decision and Order, if no further action is taken, shall be certified to the **Hall** County Treasurer and the **Hall** 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 Amended Decision and Order shall only be applicable to tax year 2014.
7. This Amended Decision and Order is effective on August 18, 2015.

Signed and Sealed: August 18, 2015

Nancy J Salmon, Commissioner

¹² See, 442 Neb. Admin. Code, ch. 5 § 016.02A (06/11).