

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Vickie L. Wiers,
Appellant,

v.

Richardson County Board of Equalization,
Appellee.

Case No: 16A 0139, 16A 140, & 16A 141

Decision and Order Affirming the
Determinations of the Richardson County
Board of Equalization

Background

1. The Subject Property in Case No. 16A-139 is an unimproved 110.27 acre agricultural and horticultural parcel, with a legal description of: 16-1-13 110.27A Pt NE¹/₄NE¹/₄ & S¹/₂NE¹/₄ S of Hwy, Richardson County, Nebraska.
2. The Subject Property in Case No. 16A-140 is an 80 acre agricultural and horticultural parcel improved with an outbuilding and, with a legal description of: 32-2-13, 80A E ¹/₂ NW ¹/₄, Richardson County, Nebraska.
3. The Subject Property in Case No. 16A-141 is an 80 acre unimproved agricultural and horticultural parcel, with a legal description of: 32-2-13 80A W ¹/₂ NW ¹/₄, Richardson County, Nebraska.
4. The Richardson County Assessor (the County Assessor) assessed the Subject Property in Case No 16A-139 at \$383,695 for tax year 2016.
5. The Taxpayer protested this value to the Richardson County Board of Equalization (the County Board) and requested an assessed value of \$368,089 for tax year 2016.
6. The County Board determined that the taxable value of the Subject Property in Case No. 16A-139 was \$365,828 for tax year 2016.
7. The County Assessor assessed the Subject Property in Case No 16A-140 at \$216,558 for tax year 2016.
8. The Taxpayer protested this value to the County Board and requested an assessed value of \$202,493 for tax year 2016.
9. The County Board determined that the taxable value of the Subject Property in Case No 16A 140 was \$197,535 for tax year 2016.
10. The County Assessor assessed the Subject Property in Case No. 16A-141 at \$252,279 for tax year 2016.
11. The Taxpayer protested this value to the County Board and requested an assessed value of \$239,788 for tax year 2016.
12. The County Board determined that the taxable value of the Subject Property in Case No. 16A-141 was \$238,656 for tax year 2016.
13. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

14. A Single Commissioner hearing was held on August 18, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven A. Keetle.
15. Vickie L. Wiers was present at the hearing (Taxpayer).
16. Pamela G. Vice, Richardson County Assessor (Assessor), was present for the County Board.

Applicable Law

17. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
18. The Commission's review of the determination of the County Board of Equalization is de novo.²
19. 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
20. 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
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
22. 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
23. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

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

² See, Neb. Rev. Stat. §77-5016(8) (2016 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).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 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) (2016 Cum. Supp.).

Findings of Fact & Conclusions of Law

24. The Taxpayer alleges that the Subject Property is over assessed because acres enrolled in the Conservation Reserve Program (CRP) are misclassified and acres in grass are being assessed as dryland.
25. Land which is enrolled in the CRP are under contracts between the owner of the land and the United States Department of Agriculture (USDA). The evidence indicates that when a landowner enters into a CRP contract, he or she is required to plant certain grasses or other cover to control soil erosion and in return receives annual payment and may still use the land for grazing operations.
26. The Commission has determined that land enrolled in CRP and other government programs require separate market analysis. Land should be classified at its current use such as grassland; however, the values for land enrolled in the program acres should be adjusted to reflect the local market for similar property.⁹
27. The Assessor stated that she was unable to get CRP acre information for land in Richardson County from the Farm Service Agency (FSA), the only information she was able to get was the names of individuals that have land enrolled in CRP.
28. The Assessor indicated that there was one sale of land which contained known CRP acres in Richardson County and that the sales price per acre indicated that the CRP acres were selling at an amount similar to the value of dryland cropland, not at an amount similar to the value of grassland.
29. Therefore, the Assessor assessed CRP acres as they were classified before entering into CRP rather than classifying them as grassland acres. For example, acres that were dryland cropland prior to entering into CRP remained classified as dryland cropland for assessment purposes after entering CRP.
30. The Taxpayer stated that the counties surrounding Richardson county assessed acres enrolled in CRP at a per acre value based on CRP classification. No information regarding how the surrounding counties classified CRP acres or arrived at an assessed value for CRP acres was presented to the Commission.
31. The Taxpayer indicated the number of acres on the Subject Property which were enrolled in CRP, however the location of the acres, terms of the CRP contracts, use restrictions on these acres, the length of restrictions if any, payment terms, and other factors were not presented to the Commission.
32. The Taxpayer calculated a requested CRP value per acre based on average assessed values for the Subject Properties, CRP payments received for the Subject Properties, and average rental rates from the Farm Service Agency (FSA). The Taxpayers calculation uses the assessed values of dryland cropland and grassland as a starting point to determine a value for land in CRP.

⁹ Title, 350, Neb. Admin. Code, ch 14 §§004.04E and 006.04C(3) (3/09)

33. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁰ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹¹ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.¹²
34. The Taxpayer did not produce information concerning sales of agricultural or horticultural land in Richardson County.
35. The Taxpayer did not produce information regarding any sales of agricultural or horticultural land containing acres enrolled in CRP.
36. 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.
37. 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, are Affirmed.
2. The taxable value of the Subject Property in Case No. 16A-139 for tax year 2016 is:

<u>Land</u>	\$365,828
Total	\$365,828

3. The taxable value of the Subject Property in Case No. 16A-140 for tax year 2016 is:

<u>Land</u>	\$197,535
Total	\$197,535

4. The taxable value of the Subject Property in Case No. 16A-141 for tax year 2016 is:

<u>Land</u>	\$238,656
Total	\$238,656

5. This Decision and Order, if no further action is taken, shall be certified to the Richardson County Treasurer and the Richardson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2009)

¹¹ Id.

¹² See generally, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974) (holding that the assessed values of real property was not admissible evidence of actual value in a condemnation case accepting that while assessed values are required to be set at actual value, errors may occur resulting in an assessed value that is not at actual value)

6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2016.
9. This Decision and Order is effective on November 15, 2017.

Signed and Sealed: November 15, 2017

Steven A. Keetle, Commissioner