

## Wasteland Valuation Case

Due to the property owner's designation of property as "special value", two parcels of wasteland were valued at 75 percent of their value for agricultural and horticultural uses, according to a Nebraska Supreme Court decision handed down on November 3, 2017.

The case involved two parcels of land owned by William Burdess. Both parcels consisted of agricultural land, a homesite, a secondary building, and wasteland. The wasteland, like all other wasteland in the county, was valued at \$290 per acre for tax year 2013, \$335 per acre for tax year 2014, and \$450 per acre for tax years 2015 and 2016. The homesite acres were assessed at \$41,000. Burdess protested the 2013 through 2016 assessed values, arguing that the wasteland should be valued at \$0 and that the homesite acres should be valued no higher than another homesite one-half mile away.

The county board of equalization denied the protest and Burdess appealed to the Tax Equalization and Review Commission (TERC). TERC affirmed the county board of equalization's decision and Burdess appealed to the Nebraska Supreme Court.

Burdess argued that the wasteland was not cultivable or profitable, but was used for mushroom hunting and walnut tree harvesting. He permitted family members to hunt mushrooms on the land but did not charge any fees to do so. He had earned approximately \$7,500 over the past 50 years selling walnut trees but none was earned during the tax years at issue.

Burdess elected to categorize the wasteland as "special value". Special value is the value the land would have for agricultural and horticultural purposes without regard to the actual value for other uses. Special valuation does not take into account urban development potential.

The Washington County assessor testified that he looked at the values of properties in other counties with less development potential. He assessed the wasteland acres based upon actual sales of farmland containing wasteland in another county, then increased the value in proportion to the increases for other classes of property, such as dryland or irrigated land.

The Court reviewed the statutory process for valuing land at 100 percent of actual value unless it is expressly exempt or valued as agricultural or horticultural land. By statute, agricultural and horticultural land are valued at 75 percent of value. Owners of certain types of agricultural and horticultural land can elect a "special valuation" rather than having the property valued at actual value. The special valuation statutes were enacted because of the economic impact of urban development and other nonagricultural development on neighboring land. It protects persons engaged in agricultural endeavors from excessive tax burdens due to their proximity to other development.

Burdess argued that because the land was not suitable for agricultural or horticultural purposes, its value should be \$0. However, the Legislature authorized the Tax Commissioner to promulgate rules and regulations for assessors to use to determine special valuation. The regulations require a market analysis of arm's length sales. Here, the assessor used sales of comparable properties with wasteland in another county where urban development had little influence on the price of sales. Burdess did not dispute the value of such sales or argue that they were not comparable. The Court found that Burdess failed to show that the county board of equalization's valuation was arbitrary, capricious, or unreasonable.

Next Burdess argued that the homesite acres were comparable to a property a half-mile away. The properties were all zoned agricultural but located in two different market areas. Burdess' homesite acres were located on a bluff and the other property was located in a river bottom. TERC again affirmed the county board of equalization's decision and the Court again found that the county board of equalization's decision was not arbitrary, capricious, or unreasonable.

The full text of the case, *Burdess v. Washington Cty. Bd. Of Equal.* 298 Neb. 166, 903 N.W. 2d 35 (2017), is available here. <https://supremecourt.nebraska.gov/>