

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

James T. O'Rourke,  
Appellant,

v.

Dawes County Board of Equalization,  
Appellee.

Case Nos: 13A 032, 13A 033 & 13A 034

Decision and Order Affirming the  
Determination of the Dawes County Board  
of Equalization

**For the Appellant:**  
James T. O'Rourke,  
Pro Se

**For the Appellee:**  
J. Adam Edmund,  
Deputy Dawes County Attorney

The appeals were heard before Commissioners Keetle and Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property in Case No. 13A-032 is a 54.52 acre parcel located in Dawes County, Nebraska. The Subject Property in Case No. 13A-033 is a 362.01 acre parcel located in Dawes County, Nebraska. The Subject Property in Case No. 13A-034 is a 1.51 acre parcel located in Dawes County, Nebraska. The legal descriptions and property record files of the parcels are found at Exhibit 1 page 31, Exhibit 1 page 61 and Exhibit 1 page 1 respectively.

**II. PROCEDURAL HISTORY**

The Dawes County Assessor (the Assessor) determined that the assessed value of the Subject Property in Case No. 13A-032 was \$157,955 for tax year 2013. James T. O'Rourke (the Taxpayer) protested this assessment to the Dawes County Board of Equalization (the County Board) and requested an assessed valuation of \$150,645. The Dawes County Board determined that the assessed value for tax year 2013 was \$157,955.<sup>1</sup>

---

<sup>1</sup> Exhibit 1 page 32

The Assessor determined that the assessed value of the Subject Property in case No. 13A-033 was \$87,195 for tax year 2013. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$54,409. The County Board determined that the assessed value for tax year 2013 was \$79,055.<sup>2</sup>

The Assessor determined that the assessed value of the Subject Property in Case No. 13A-034 was \$360 for tax year 2013. The Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$225. The County Board determined that the assessed value for tax year 2013 was \$360.<sup>3</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on May 24, 2017.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>4</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>5</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>6</sup>

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

---

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 1.

<sup>4</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>5</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

arbitrary.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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>9</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>10</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>11</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>12</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

#### IV. VALUATION LAW

Under Nebraska law,

[a]ctual value is the most probable price 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 a 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 full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>14</sup>

“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

---

<sup>7</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>8</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</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>10</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”<sup>15</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>16</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>20</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>21</sup>

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

- (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.<sup>22</sup>

## V. EQUALIZATION LAW

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this

---

<sup>15</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>16</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>17</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>18</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>21</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>22</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

Constitution.”<sup>23</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>24</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>25</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>26</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>27</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>28</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>29</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>30</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>31</sup>

## VI. SUMMARY OF THE EVIDENCE

James T. O’Rourke testified at the hearing that he has a PhD in range management with a PhD minor in soils, teaching his entire career at the college level and started the range management program at Chadron State College. O’Rourke testified that the basis of his appeals is that the soil classification system used by the Assessor is flawed and results in the incorrect valuations of real property similar to that located on the Subject Property.

---

<sup>23</sup> *Neb. Const.*, Art. VIII, §1.

<sup>24</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>25</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>26</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>27</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>28</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>29</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>30</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>31</sup> *Id.* at 673, 94 N.W.2d at 50.

In his pleadings O'Rourke specifically asserted that the Nebraska Department of Revenue's Property Assessment Division's (PAD) system is inappropriate because it assigns use classifications to real property prior to assigning soil capability classification groupings or Land Capability Groups (LCG). He further asserted that the Soil Conservation Service (SCS) and Natural Resource Conservation Service (NRCS) soil capability classifications were determined by professionals with scientific expertise, and that Nebraska assessors and PAD engaged in the assignment of real property to subclasses or LCGs without the property expertise.<sup>32</sup> The agricultural and horticultural land acres of the Subject Property consists mostly of grassland. The LCG assignments for each grassland soil type according to the Rules and Regulations of the Department of Revenue for grassland in Dawes County appear to be flawed when looking at the NRCS production ratings for each soil type compared to its assigned LCG.

O'Rourke asserted that his review of the Subject Property's assessment under PAD's system indicated that there was not a discernible or consistent pattern for assigning a particular SCS or NRCS soil capability group to a LCG.

In Nebraska agricultural land and horticultural land classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture as converted into land capability groups (LCG) by the Property Tax Administrator.<sup>33</sup> County assessors are required to utilize these LCGs as directed by the Property Tax Administrator.<sup>34</sup> The PAD has adopted and promulgated Rules and Regulations to carry out their duties pertaining to the classification of agricultural and horticultural land by LCGs.<sup>35</sup> These rules and regulations state that the conversion legend for all LCGs is prepared by the PAD according to the dryland capability classification of each soil that shows, in a general way, the suitability of each soil for most kinds of field crops.<sup>36</sup> This conversion legend shows the LCGs for each soil in a county whether in grassland, dryland or irrigated cropland.<sup>37</sup>

---

<sup>32</sup> O'Rourke's testimony sometimes uses the term Soil Conservation Service ("SCS") together with the term Natural Resource Conservation Service ("NRCS").

<sup>33</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), the Property Tax Administrator is the chief administrative officer of the property assessment division of the Department of Revenue, see Neb. Rev. Stat. 77-701 (2014 Cum. Supp.).

<sup>34</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.).

<sup>35</sup> See, Title 350 Neb. Admin. Code ch. 14 (3/09).

<sup>36</sup> Title 350 Neb. Admin. Code ch 14, §004.08B (3/09).

<sup>37</sup> Title 350 Neb. Admin. Code ch 14, §004.08B (3/09).

PAD's regulations require county assessors to inventory and categorize each parcel of agricultural land using the following classes: (1) irrigated cropland; (2) dryland cropland; (3) grassland; and (4) wasteland.<sup>38</sup> The county assessor is then required to use a soil conversion legend created by PAD to assign agricultural land to an appropriate LCG.<sup>39</sup>

In addition to the soil conversion legend, the regulations provide LCG definitions and guidelines for use by county assessors for purposes of assessing agricultural and horticultural land.<sup>40</sup> The regulations also permit county assessors to develop additional LCG sub-classifications if needed to achieve uniform and proportionate valuation.<sup>41</sup>

The Taxpayer acknowledges that the Assessor is following the Statutes and Regulations regarding the assessment of agricultural and horticultural land in Nebraska.

The Taxpayer did not present any information regarding how the flawed LCG's imposed by the Rules and Regulations of the Department of Revenue impacted the assessed value of the Subject Property or any other property in Dawes County. There is no information regarding sales of agricultural or horticultural property in Dawes County in the record before the Commission. There is no information regarding the assessment of any other parcel of property in Dawes County other than the Subject Property.

The Taxpayer has failed to adduce any evidence to indicate that the assessed values as determined by the County are unreasonable, arbitrary or incorrect.

## VII. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

---

<sup>38</sup> 350 Neb. Admin. Code, ch. 14, §004.04 (3/2009).

<sup>39</sup> 350 Neb. Admin. Chapter 14 Admin. Code, ch. 14, §004.08B (3/2009) It is the Commission's understanding that the conversion legend referenced in this regulation correlates codes contained on NRCS soil maps with LCG categories.

<sup>40</sup> 350 Neb. Admin. Code, ch. 14, §004.08C-H (3/2009).

<sup>41</sup> 350 Neb. Admin. Code, ch. 14, §004.09 (3/2009).

## VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dawes County Board of Equalization determining the value of the Subject Property for tax year 2013 are affirmed.<sup>42</sup>
2. The assessed value of the Subject Property for tax year 2013 are:

Case No. 13A 032

|                      |                  |
|----------------------|------------------|
| Land:                | \$ 23,690        |
| <u>Improvements:</u> | <u>\$134,265</u> |
| Total:               | \$157,955        |

Case No. 13A 033

|              |                  |
|--------------|------------------|
| <u>Land:</u> | <u>\$ 79,055</u> |
| Total:       | \$ 79,055        |

Case No. 13A 034

|              |               |
|--------------|---------------|
| <u>Land:</u> | <u>\$ 360</u> |
| Total:       | \$ 360        |

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawes County Treasurer and the Dawes 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 2013.
7. This Decision and Order is effective for purposes of appeal on July 18, 2017.<sup>43</sup>

---

<sup>42</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

<sup>43</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

Signed and Sealed: July 18, 2017

---

Steven A. Keetle, Commissioner

SEAL

---

Nancy J. Salmon, Commissione