

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

Estate of Myron Jacobson,  
Appellant,

v.

Sheridan County Board of Equalization,  
Appellee.

Case Nos: 15A 0148, 15A 0149, 15A 0150,  
15A 0151, 15A 0152, 15A 0153, 15A 0154  
& 15A 0155

Decision and Order

**For the Appellant:**

Estate of Myron Jacobson,  
Pro Se

**For the Appellee:**

Jamian J. Simmons,  
Sheridan County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Properties are eight agricultural parcels located in Sheridan County, Nebraska. The legal descriptions of the Subject Properties are found at Exhibits 1 through 8. The Property Record Files (PRF) for the Subject Properties are found at Exhibits 9 through 17.

**II. PROCEDURAL HISTORY**

The Sheridan County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No 15A 0148 was \$55,317 for tax year 2015. Estate of Myron Jacobson (the Taxpayer) protested this assessment to the Sheridan County Board of Equalization (the County Board) and requested an assessed valuation of \$47,914. The County Board determined that the assessed value for tax year 2015 was \$55,317.<sup>1</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0149 was \$60,265 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$52,254. The County Board determined that the assessed value for tax year 2015 was \$60,265.<sup>2</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0150 was \$390,184 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$324,799. The County Board determined that the assessed value for tax year 2015 was \$390,184.<sup>3</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0151 was \$88,671 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$77,042. The County Board determined that the assessed value for tax year 2015 was \$88,671.<sup>4</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0152 was \$67,974 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$58,983. The County Board determined that the assessed value for tax year 2015 was \$67,974.<sup>5</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0153 was \$48,000 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$41,600. The County Board determined that the assessed value for tax year 2015 was \$31,594.<sup>6</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0154 was \$48,000 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$41,600. The County Board determined that the assessed value for tax year 2015 was \$34,350.<sup>7</sup>

The County Assessor determined that the assessed value of the Subject Property in Case No 15A 0155 was \$84,784 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$73,473. The County Board determined that the assessed value for tax year 2015 was \$76,386.<sup>8</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties

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<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Exhibit 7.

<sup>8</sup> Exhibit 4.

stipulated to the receipt of Exhibits 1-56 and 59; the Commission also received Exhibit 57. The Commission held a hearing on June 14, 2018, with Commissioner Keetle presiding.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>9</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>10</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>11</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 arbitrary.<sup>12</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>13</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>14</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>15</sup>

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<sup>9</sup> 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).

<sup>10</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>11</sup> *Id.*

<sup>12</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>13</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>14</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>15</sup> *Bottof v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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>16</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>17</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>18</sup>

#### IV. VALUATION

##### A. 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>19</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 77-1371, (2) income approach, and (3) cost approach.”<sup>20</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>21</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>22</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>23</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>24</sup>

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<sup>16</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>17</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>18</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>21</sup> *Omaha Country Club* at 180, 829.

<sup>22</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>23</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>24</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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>25</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>26</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>27</sup>

## **B. Summary of the Evidence**

The Taxpayer alleges that using sales of comparable agricultural land is not a valid method to change the assessed value of agricultural land in Sheridan County. The Taxpayer further alleged that an increase in land value from the prior assessment year is incorrect, because land only has value if you wish to sell it. The Taxpayer alleges that the Subject Properties are unique, in that several of the Subject Properties do not have the same water access as the comparable sales used by the county. The Taxpayer also alleges that the land values as set forth in the Nebraska Farm Real Estate Developments 2014-2015 report should be used to value the Subject Property.<sup>28</sup>

The Taxpayer alleged that the Piper Property presented by the County Board was the only one of the County Boards comparables that could be actually comparable to the Subject

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<sup>25</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>26</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>27</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>28</sup> Nebraska Farm Real Estate Developments 2014-2015, Jim Jansen and Roger Wilson, Department of Agricultural Economics, University of Nebraska Lincoln.

Properties.<sup>29</sup> The Taxpayer didn't present any sales of property other than those presented by the County Board or provide any other opinion of value for the Subject Properties.

The Nebraska Farm Real Estate Developments 2014-2015 report only sets forth average land values for regions in the state of Nebraska. Furthermore, the report states that “[d]ue to the inherent limitations of this survey, some of which are listed above, information in this report should not be used to set a specific rental rate or value a particular parcel of real property for sale or property taxes, security for a loan, and other related legal matters.”<sup>30</sup>

The Assessor testified that she determined the assessed values of agricultural and horticultural land in Sheridan County based on a Sales Study using the sales of agricultural and horticultural land in Sheridan County.<sup>31</sup> The Assessor utilized the Land Valuation Groups for each soil type as required by the Department of Revenue, Property Assessment Division.<sup>32</sup> The Assessor further testified that the per acre values determined for each Land Valuation Group (LVG) were applied uniformly throughout the County. For example, each acre of agricultural and horticultural land valued as 4G1 received the same assessed value throughout the county.

## V. 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 determination of the County Board should be Affirmed.

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<sup>29</sup> See, E25 & E44

<sup>30</sup> 2014-2015 University of Nebraska Farm Real Estate Highlights report, page iii

<sup>31</sup> See, E30

<sup>32</sup> See, Title 350 Neb. Admin. Code ch 14, §002.41(3/09)

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sheridan County Board of Equalization determining the value of the Subject Property for tax year 2015 are affirmed.<sup>33</sup>
2. The assessed values of the Subject Properties for tax year 2015 are:

**Case No. 15A-0148**

Total: \$ 55,317

**Case No. 15A-149**

Total: \$ 60,265

**Case No. 15A-150**

Land: \$372,628

Improvements: \$ 17,556

Total: \$390,184

**Case No. 15A-151**

Total: \$ 88,671

**Case No. 15A-152**

Total: \$ 67,974

**Case No. 15A-153**

Total: \$ 31,594

**Case No. 15A-154**

Total: \$ 34,350

**Case No. 15A-155**

Total: \$ 76,386

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sheridan County Treasurer and the Sheridan County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

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<sup>33</sup> Assessed 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.

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 for purposes of appeal on November 9, 2018.

Signed and Sealed: November 9, 2018

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.