

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William D. & Robert L. Anderson,
Appellant,

v.

Phelps County Board of Equalization,
Appellee.

Cases No: 16A 0097 and 16A 0098

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Properties are two unimproved agricultural parcels. The legal description of the parcel which is the subject of Case 16A 0097 is SE1/4 of 24-6-18, containing 155 Ac., Phelps County, Nebraska. The legal description of the parcel which is the subject of Case 16A 0098 is NW ¼ 26-6-18, 160.78 Ac, Phelps County, Nebraska
2. The Phelps County Assessor (the County Assessor) assessed the Subject Property in Case 16A 0097 at \$915,745 for tax year 2016. The Subject Property in Case No. 16A 0098 was assessed at \$908,527 for tax year 2016.
3. The Taxpayer protested these values to the Phelps County Board of Equalization (the County Board) and requested an assessed value of \$ 737,800 for the Subject Property in Case No. 16A 0097 for tax year 2016 and \$737,800 for the Subject Property in Case No. 16A 0098 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property in Case No. 16A 0097 was \$915,745 for tax year 2016. The County Board determined that the taxable value of the Subject Property in Case No. 16A 0098 was \$908,527 for tax year 2016.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 26, 2017, at the Younes Conference Center, 416 W Talmadge St., Kearney, Nebraska, before Commissioner Nancy J Salmon.
7. William D. & Robert L. Anderson were present at the hearing on behalf of the Taxpayer.
8. Melodie Marvin, Phelps County Assessor, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²

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

11. 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 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.⁵

“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.”⁶ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”⁷ 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.⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁰

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).

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. §77-112 (Reissue 2009).

⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁰ Neb. Rev. Stat. §77-201(1) (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.¹¹

12. 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.¹²
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹³
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁴
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁵

Findings of Fact & Conclusions of Law

16. The Taxpayers expressed much concern over the rising taxes in Phelps County. With respect to the valuation of the Subject Properties, the Taxpayers felt that the price they paid for their properties should equate to fair market value as their purchases were arms-length transactions. The Assessor did not consider the sales to be arms-length as the transactions were between relatives. The Taxpayers also felt that comparable sales in their neighborhood would reflect a reduction in the assessed values of the Subject Properties.
17. The Dictionary of Real Estate Appraisals (4th ed. 2002) provides that an arms-length transaction is a transaction between *unrelated* parties. While many such transactions may be for near market value, it is virtually impossible for an appraiser or assessor to verify that the sales are arms-length. As noted above, actual value is the most probable price that parties will pay in an arms-length transaction. In this case, the Assessor explained that she had examined sales in Phelps County over a three year period and compared sizes of tracts as well as soil types (LCGs). She utilized soil types comparable to those of the Subject Properties. The Taxpayers also noted that some of the comparable properties had multiple sources of water and would be valued higher than the Subject Properties since they had only a single source. The Commission finds that there is insufficient evidence to determine any difference, if any, in actual value of land irrigated from

¹¹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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

¹⁴ 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).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

multiple water sources. The data provided by the Assessor supports her valuation as of January 1, 2016.

18. The Taxpayers also stressed that the liberal and unwise spending of agencies in Phelps County results in higher tax levies. They iterated that much of the spending was for unnecessary goods and services beyond what taxpayers can afford.
19. The Commission has no equitable powers and can do only what it is authorized to do by Nebraska statute. Under Neb. Rev. Stat. § 77-5007, the Commission has the power and duty to hear and determine appeals of the county board of equalization equalizing the value of real property so that all real property is assessed uniformly and proportionally. It has no power or authority to affect lawful levies. County boards, city councils, school boards, and all other bodies legally authorized to make levies are free to make the rate of levy for their respective political subdivisions or municipalities at any amount not prohibited by the Constitution of Nebraska or the laws of the State.¹⁶
20. 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.
21. 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 Decision of the County Board of Equalization determining the taxable values of the Subject Properties for tax year 2016, are affirmed.
2. The taxable value of the Subject Property described in Case No. 16A 0097 for tax year 2016 is: \$915,745.
3. The taxable value of the Subject Property described in Case No. 16A 0098 for tax year 2016 is: \$908,527.
4. This Decision and Order, if no further action is taken, shall be certified to the Phelps County Treasurer and the Phelps County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2016.
8. This Decision and Order is effective on June 28, 2017.

¹⁶ 442 Neb. Admin. Code, ch. 3, § 001.01.

Signed and Sealed: June 28, 2017

Nancy J Salmon, Commissioner