

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Willis Wachter,
Appellant,

v.

Pierce County Board of Equalization,
Appellee.

Case No: 16A 0002

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

For the Appellant:

Rod Wachter & Steve Wachter,
Pro se

For the Appellee:

Verlyn Luebbe,
Deputy Pierce County Attorney

The appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a 160 acre agricultural parcel located in Pierce County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Pierce County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$876,220 for tax year 2016. Willis Wachter (the Taxpayer) protested this assessment to the Pierce County Board of Equalization (the County Board) and requested an assessed valuation of \$841,490.¹ The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$876,220.²

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The parties stipulated to the receipt of exchanged exhibits 1 through 15. The Commission held a hearing on June 28, 2018.

¹ Ex 2:2.

² Ex 1.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

A taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ 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.⁹

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

³ 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).

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

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”¹⁰ 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.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

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.¹³

“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.”¹⁴ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

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

¹⁰ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Omaha Country Club* at 180, 829.

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²⁰

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.²¹

B. Summary of the Evidence

The Taxpayer alleged that the assessment as shown on the 2016 Real Tax Statement for the Subject Property did not reflect the 75% assessment of agricultural and horticultural land required by law.

Joan Lubke, the Deputy Pierce County Assessor, (the Deputy Assessor) testified that the County utilized qualified sales from the three year period prior to the assessment date of January 1, 2016, to determine agricultural and horticultural values in her county. The Assessor valued the Subject Property utilizing a mass appraisal sales comparison approach to determine the agricultural and horticultural value as reflected on the Property Record File.²² The Deputy Assessor further testified that the Subject Property was valued using the same per acre values as all agricultural and horticultural land in the county.²³ The County Board affirmed the assessment determination of the Assessor.

¹⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-132 (Reissue 2009).

²¹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²² Ex 3.

²³ See also, E5:6. The unit value of each acre varies based on soil capability.

The Taxpayer further alleged that the County Board's assessment did not properly reflect the property rights being valued for assessment because the Subject Property was subject to a lease.

In the assessment of real property, real property means "all land, buildings, fixtures other than trade fixtures, improvements, certain mobile homes, cabin trailers and similar property, mineral interests, and all privileges pertaining to real property."²⁴ "Privileges pertaining to real property means the right to sell, lease, use, give away, or enter, or refuse to do any of these. All rights may or may not be vested in one owner or interest holder."²⁵ The record indicates that the Taxpayer retains a life estate in the Subject Property, with Rodney and Steven Wachter as remaindermen.²⁶ The Commission finds that the Taxpayer exercised his rights to lease the land under a farm lease agreement, and that there is no evidence that such lease reduces the actual value of the Subject Property.

Based upon the evidence presented, the Commission finds that the assessed value of the Subject Property was derived using a statutorily authorized commonly accepted mass appraisal technique: the sales comparison approach.²⁷ No evidence was offered to suggest that the County Assessor did not follow the standards and accepted mass appraisal practices for determining the assessed value of real property using the sales comparison approach.²⁸

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 appeal of the Taxpayer is denied.

²⁴ Title 350 Neb. Admin. Code, ch 14, §002.18 (10/14).

²⁵ Title 350 Neb. Admin. Code, ch 14, §002.18G (10/14). These six basic legal rights are the "bundle of rights" associated with ownership of property, and in combination constitute fee simple title. See International Association of Assessing Officers, *Property Assessment Valuation*, Third Edition, p 10. (2010).

²⁶ See, Ex 3:1.

²⁷ See, Neb. Rev. Stat. §77-112 (2009).

²⁸ See, The Appraisal Institute, *The Appraisal of Real Estate*, at 460-461 (14th ed. 2013).

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Pierce County Board of Equalization determining the value of the Subject Property for tax year 2016 is affirmed.²⁹
2. The assessed value of the Subject Property for tax year 2016 is: \$876,220.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Pierce County Treasurer and the Pierce 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.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective for purposes of appeal on November 28, 2018.

Signed and Sealed: November 28, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

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

²⁹ 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.