

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

Jackie S. Russell,  
Appellant,

v.

Adams County Board of Equalization,  
and  
Michael Karr,  
Appellee(s).

Case No: 16A 0195

Decision and Order Reversing the Decision  
of the Adams County Board of Equalization

**For the Appellant:**

Dan Pauley,  
Attorney at Law  
for Jackie S. Russell,  
Adams County Assessor

**For the Appellee:**

David Bergin,  
Deputy Adams County Attorney  
for the Adams County Board  
of Equalization

Michael Karr,  
Pro Se

The appeal was heard before Commissioners Steven A. Keetle and Robert W. Hotz.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 76 acre parcel of agricultural land and horticultural land located in Adams County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. A portion of the property record card for the Subject Property is found at Exhibit 2, page 6.

**II. PROCEDURAL HISTORY**

Jackie Russell, the Adams County Assessor (the Assessor), determined that the assessed value of the Subject Property was \$401,690 for tax year 2016. Michael Karr (the Owner) protested this assessment to the Adams County Board of Equalization (the County Board) and requested an assessed valuation of \$150,000. The Adams County Board of Equalization (the County Board) determined that the taxable value of the Subject Property for tax year 2016 was \$295,500.<sup>1</sup>

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<sup>1</sup> Exhibit 1.

The Assessor appealed the decision 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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits.<sup>2</sup> The Commission held a hearing on June 20, 2017.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</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>4</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>5</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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</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>8</sup> The County Board need not

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<sup>2</sup> Case File.

<sup>3</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>4</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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

<sup>8</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).

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>9</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>10</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>11</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>12</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>13</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>14</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>15</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>16</sup> All real property in Nebraska subject to taxation

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

<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

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

<sup>15</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>16</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

shall be assessed as of January 1.<sup>17</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>18</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>19</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>20</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.<sup>21</sup>

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

The Subject Property is used as a pasture and contains a well and center pivot system that can apply irrigation to portions of grass located on the Subject Property.

The Assessor testified that she assessed all agricultural land and horticultural land in Adams County where irrigation is used as irrigated cropland, as required by the Nebraska Administrative Code. The Nebraska Administrative Code states that, “Irrigated Cropland includes all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”<sup>22</sup> The Assessor testified that she had only three parcels of agricultural land and horticultural land in Adams County where irrigation was applied to grass and that there had been no sales to establish a market for irrigated grass acres as compared to grassland acres and irrigated cropland acres. The Assessor therefore valued grass acres where irrigation was applied at the same per acre value as other agricultural land and horticultural land where irrigation was applied to any other crop. The Assessor testified that she assessed the Subject Property’s irrigated grass acres as she would any other irrigated acres, regardless of the irrigation system.

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

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>21</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>22</sup> Title 350 Neb. Admin. Code, ch 14, §002.21B (3/09)

The value of the Subject Property as determined by the Assessor for tax year 2016 was \$401,690.<sup>23</sup>

The Assessor offered the testimony of Jim Kuhn, the Chief Appraiser (the Appraiser) for the Assessor, regarding the assessment of irrigated grass acres. The Appraiser testified that there were no sales of grass acres with a pivot on the property used to irrigate the grass. The sale of the Subject Property was not used for setting assessed values for the 2016 tax year because the well and pivot irrigation system were added to the Subject Property after the purchase, which would be considered a substantial change to the property and therefore not a qualified sale.<sup>24</sup> The Appraiser testified that he looked to surrounding counties and there were not sales of grass with a pivot irrigation system that could be used to determine a market value for irrigated grass acres. The Appraiser testified that without any sales or other market information the Assessor was unable to determine a separate value for agricultural land and horticultural land containing irrigated grass acres that the Assessor would be able to justify and defend. The Appraiser testified that because the Assessor was unable to determine a market value for irrigated grass they followed the requirements of the Nebraska Administrative Code and set the assessed value for irrigated grassland at the same value as all other irrigated cropland.

The County Board determined value of the Subject Property was based on the purchase price of the Subject Property in 2013, with an additional \$20,000 for the value of the well that had been added to the Subject Property.<sup>25</sup> The County Board did not offer any information or sales to indicate that the purchase price was indicative of the market value for irrigated grass acres.<sup>26</sup> The County Board offered no other basis for its reduction to the assessed value of the Subject Property for tax year 2016.

Michael Karr, the Owner, testified that the well which was added to the Subject Property was “not a good well” and that it only produced from 250-300 gallons per minute, compared to 600-800 gallons per minute, the typical capacity of wells located on other irrigated cropland which he owned. The Owner testified that he used the well and center pivot irrigation system to

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<sup>23</sup> E2:6, E5.

<sup>24</sup> See, Title 350 Neb. Admin. Code, ch 12. §002.11

<sup>25</sup> See, Exhibit 3

<sup>26</sup> “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.” *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

supplement rainfall and keep up the grass on the Subject Property for grazing purposes. The Owner further testified that there is currently a well moratorium in the area of the Subject Property and that he was unaware of any ability to sell water rights in Adams County. While the Owner alleged that the quality of the well and the use of the property as grassland, whether irrigated or not, reduced the value of the Subject Property, particularly when compared to other irrigated cropland used for row crops, the Owner was unable to quantify the impact of these factors on the actual value of the Subject Property.

## V. CONCLUSION

The Commission finds that there is 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 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 vacated and reversed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Adams County Board of Equalization determining the assessed value of the Subject Property for tax year 2016 is vacated and reversed.<sup>27</sup>
2. The assessed value of the Subject Property for tax year 2016 is:

Land:	\$401,190
<u>Improvements:</u>	<u>\$ 500</u>
Total:	\$401,690

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Adams County Treasurer and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

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<sup>27</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.

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 August 31, 2017.

Signed and Sealed: August 31, 2017.

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Steven A. Keetle, Commissioner

SEAL

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Robert W. Hotz, 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 Statutes, and Court Rules.