

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jackie S. Russell,
Appellant,

v.

Adams County Board of Equalization,
and
C. Raye and Carolyn P. Woodman, Trust, C.
Raye and Carolyn P. Woodman, Trustees,
Appellee(s).

Case No: 16A 0197

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

Carolyn Woodman, Trustee,
Carolyn P. Woodman Rev. Trust

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

I. THE SUBJECT PROPERTY

The Subject Property is a 128.90 acre agricultural parcel located in Adams 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 2, page 6.

II. PROCEDURAL HISTORY

Jackie Russell, the Adams County Assessor (the Assessor), determined that the assessed value of the Subject Property was \$543,390 for tax year 2016. The Carolyn P. Woodman Rev. Trust (the Owner) protested this assessment to the Adams County Board of Equalization (the County Board) and requested an assessed valuation of \$239,400. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$507,545.¹

¹ 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.² 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.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

² Case File.

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. 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.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 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

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

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

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

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 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.²¹

B. Summary of the Evidence

The Subject Property is an agricultural and horticultural parcel located in Adams County with a pivot irrigation system and a river and a railroad that run through it.

The Assessor offered the testimony of Jim Kuhn, the Chief Appraiser (the Appraiser) for the Assessor, regarding the assessment of the Subject Property. The Assessor classifies agricultural land and horticultural land based on the use of the land and the quality of the soils on each parcel as sorted into Land Capability Groups (LCG).²² Soil maps from the Natural Resources Conservation Service were used to determine classifications of the acres of all agricultural land and horticultural land in the county into LCG’s based on soil composition and topography.²³ The Appraiser testified that the Assessor does not consider the water table of a parcel of property when setting assessed values in Adams County. The value of the Subject Property as determined by the Assessor for tax year 2016 was \$543,390.²⁴

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

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

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 The Nebraska Administrative Code defines land capability groups as “groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment.” NAC Title 350, Chapter 14, §002.41 (Rev. 3/15/09).

²³ See, Exhibit 4 page 12-13.

²⁴ E2:6, E5.

The County Board determined value of the Subject Property was based on one sale of agricultural land and horticultural land located in Hall County.²⁵ The County Board did not offer the Property Record File (PRF) for the property in Hall County upon which it based its determination of value for the Subject Property to allow the Commission to determine if it is comparable to the Subject Property. The County Board did not offer any other information or sales to indicate that the sale of a single parcel was indicative of the market value for agricultural land and horticultural land in Adams County.²⁶ The County Board offered no other basis for its reduction to the assessed value of the Subject Property for tax year 2016.

The County Board offered the testimony of Doug Woodman, who rents and farms the Subject Property (the Renter). The Renter testified that the soil wasn't as deep on the Subject Property as it was in other parts of Adams County. The Renter testified that the soil was only six inches to a few feet deep and that the water table was so high that holes as little as two feet in depth would fill with water. The Renter testified that because of the high water table the crop yields would decrease in wet years and increase in drought years. The Renter further testified that regardless of the high water table he had to apply water to the Subject Property to provide sufficient water for crop growth. The Renter did not quantify the impact of the soil depth and water table on the value of the Subject Property.

The County Board offered the testimony of Carolyn Woodman, trustee of the Carolyn P. Woodman Rev. Trust, which owns the Subject Property (The Trustee). The Trustee disputed the acre count of the Subject Property, but did not disagree with the property lines as determined by the Assessor. The Trustee offered information concerning the auction of land in Adams County and Hall County.²⁷ The record before the Commission does not however contain the PRF for these properties upon which it based its determination of value for the Subject Property to allow the Commission to determine if it is comparable to the Subject Property.

²⁵ See, Exhibit 3

²⁶ "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).

²⁷ E4:8-11

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.²⁸
2. The assessed value of the Subject Property for tax year 2016 is \$543,390.
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.).
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.

²⁸ 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.

7. This Decision and Order is effective for purposes of appeal on August 31, 2017.

Signed and Sealed: August 31, 2017

Steven A. Keetle, Commissioner

SEAL

Robert W. Hotz, 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.