

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

Shirley A. Hubbard  
Appellant,

v.

Lincoln County Board of Equalization,  
Appellee.

Case No: 16R 0166 & 16R 0180

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

**For the Appellant:**  
Shirley A. Hubbard,  
Pro Se

**For the Appellee:**  
Joe W. Wright,  
Deputy Lincoln County Attorney

The appeal was heard before Commissioners Steven Keetle and Nancy Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of two contiguous parcels located in Lincoln County, Nebraska. The legal descriptions of the Subject Property are found at Exhibits 1 and 2. The property record card for the Subject Property is found at Exhibit 4 pages 41-63 and Exhibit 5 pages 32-40.

**II. PROCEDURAL HISTORY**

The Lincoln County Assessor determined that the assessed value of the Subject Property in Case No. 16R-166 was \$249,350 for tax year 2016. Shirley A. Hubbard (the Taxpayer) protested this assessment to the Lincoln County Board of Equalization (the County Board) and requested an assessed valuation of \$214,535. The Lincoln County Board determined that the taxable value of the Subject Property for tax year 2016 was \$248,890.<sup>1</sup>

The Lincoln County Assessor determined that the assessed value of the Subject Property in Case No. 16R-180 was \$12,350 for tax year 2016. The Taxpayer protested this assessment to the

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<sup>1</sup> Exhibit 1.

County Board and requested an assessed valuation of \$4,540. The Lincoln County Board determined that the taxable value of the Subject Property for tax year 2016 was \$12,350.<sup>2</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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on June 8, 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>

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<sup>2</sup> Exhibit 2.

<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).

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 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 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

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<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).

<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).

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 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. 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>21</sup>

## V. EQUALIZATION LAW

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>22</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>23</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

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

<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> *Neb. Const.*, Art. VIII, §1.

<sup>23</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>24</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>25</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>26</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>27</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>28</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>29</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>30</sup>

## VI. SUMMARY OF EVIDENCE

The parcel of the Subject Property in Case No. 16A-166 is improved with a house and a detached garage or shed, the value of these improvements is not in dispute.<sup>31</sup> The Taxpayer alleged that the primary use of the Subject Property was as agricultural and horticultural land. The Taxpayer testified that she and her husband own over 400+ acres of ranch land in Lincoln County other than the Subject Property that is classified and assessed as agricultural and horticultural land. The Taxpayer’s ranch land is not contiguous to the Subject Property and is located approximately seven miles or farther from the Subject Property. The Taxpayer testified that the Subject Property is primarily used for livestock: bucket calves, weaned calves, bulls, and occasionally horses. The Taxpayer did not offer any evidence or testimony of the amount of time that there were livestock on the Subject Property.

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<sup>24</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>25</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>26</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>27</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>28</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>29</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>30</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>31</sup> See E4:42-63.

The County offered the testimony of Julie Stenger, the Lincoln County Assessor (the Assessor) and Henry Vogt, an appraiser in the Lincoln County Assessor's Office (the Appraiser). The Assessor and the Appraiser testified that for tax year 2016 the Lincoln County Assessor's office conducted a reappraisal of parcels of land along rivers that contained accretion land. The Appraiser testified that accretion land in Lincoln County was selling as rural residential and recreational land to people that wanted to live in the country or near the river or for hunting or other recreational purposes and that this was the highest and best use for accretion land in Lincoln County.<sup>32</sup> Accretion land is land created by the gradual deposit of water borne solid materials, it may vary in size as the associated body of water either raises or lowers, or as a stream or river changes its channel.<sup>33</sup> There is a river that runs through the northern parts of the Subject Property.<sup>34</sup> The Assessor and the Appraiser testified that they viewed the Subject Property from the portion of the Subject Property located south of the river channel and using GIS mapping. The Appraiser testified that when they inspected the Subject Property they did see a water tank, a small corral, and horse manure but that there was no livestock present on the Subject Property and that it was overgrown with a small amount of grassland. The Assessor testified that one acre of the Subject Property is classified as homesite is rural residential property because the Taxpayer lives in the house on the Subject Property as her primary residence. The Property Record Files for the two parcels that make up the Subject Property indicate that there are a total of 4.36 acres of grassland, 18.78 acres of accretion land and 1 acre of homesite on the Subject Property. The Assessor and the Appraiser testified based upon the small amount of grassland compared to the amount of accretion land and their inspection of the Subject Property that they determined that the primary use of the parcels which make up the Subject Property was as rural residential and recreational land.

## **VII. 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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

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<sup>32</sup> See, Exhibit 4 pages 64-228, and Exhibit 4 pages 41-120.

<sup>33</sup> See, Title 350 Neb. Admin. Code, ch 14, §002.02 (3/09).

<sup>34</sup> See, E4:56, 62, E5:37

For all of the reasons set forth above, the appeals of the Taxpayer is denied.

**VIII. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Lincoln County Board of Equalization determining the value of the Subject Property for tax year 2016 are affirmed.<sup>35</sup>
2. The assessed value of the parcels of Subject Property for tax year 2016 are:

**Case No. 16A 166**

Land:	\$ 56,540
<u>Improvements:</u>	<u>\$192,350</u>
Total:	\$248,890

**Case No. 16A 180**

<u>Land:</u>	<u>\$ 12,350</u>
Total:	\$ 12,350

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer and the Lincoln 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 July 21, 2017.<sup>36</sup>

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<sup>35</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.

<sup>36</sup> 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.

Signed and Sealed: July 21, 2017

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Steven A. Keetle, Commissioner

SEAL

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Nancy J. Salmon, 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.