

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments, LLC,
Appellant,

v.

Box Butte County Board of Equalization,
Appellee.

Case Nos: 17A 0004

Decision and Order Affirming the Decision
of the
Box Butte County Board of Equalization

For the Appellant:
Kuldip Singh, Member,
Pro se

For the Appellee:
Travis Rodak
Box Butte County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a 304 acre agricultural parcel located in Box Butte County, Nebraska. The legal description and property record card for the Subject Property are found at Exhibit 3.

II. PROCEDURAL HISTORY

The Box Butte County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$239,123 for tax year 2017. Cheema Investments, LLC (the Taxpayer) protested this assessment to the Box Butte County Board of Equalization (the County Board) and requested an assessed valuation of \$185,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$239,123.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held hearings in three separate appeals concerning the same parties, including 17A 0004, on September 10, 2018. On that date, the Commission established a common record for the purpose of explaining the rules and procedure

¹ Ex 1.

for the hearings. The Commission proceeded to conduct an individual hearing for each of the three parcels. Exhibits 1 through 3 were admitted without objection in Case No. 17A 0004.²

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

² The exhibits were not received from the parties until the date of the hearing, and had not been fully marked at the time of the hearing. The page numbers referenced in this order were added after the hearing and will be maintained in the Commission's official record of the proceedings.

³ See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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* at 283, 811.

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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).

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, take notice of general, technical, or scientific facts within its specialized knowledge, and 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

III. VALUATION AND EQUALIZATION

A. Law

Under Nebraska law,

Actual 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 Nebraska courts have held that actual 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 the Nebraska Revised 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

¹⁰ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹⁵ *Omaha Country Club* at 180, 829.

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. §77-1301(1) (Reissue 2018)

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.¹⁹ Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, 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.²⁰

“Parcel” means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²¹ Under Neb. Rev. Stat. §77-1359:

(2)(a) 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.²²

Agricultural and horticultural land shall be divided into classes and subclasses of real property under Neb. Rev. Stat. 77-103.01 including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclass of real property based on soil classification standards developed by the Natural Resources Conservation Service (the NRCS) of the United States Department of Agriculture (the USDA) as converted into land capability groups by the Property Tax Administrator.²³

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 the Nebraska Constitution.²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. §77-201(2) (Reissue 2018).

²⁰ Neb. Rev. Stat. §77-1359(1) (Reissue 2018).

²¹ Neb. Rev. Stat. §77-132 (Reissue 2018).

²² Neb. Rev. Stat. §77-1359(2) (Reissue 2018).

²³ Neb. Rev. Stat. §77-1363 (Reissue 2018).

²⁴ *Neb. Const.*, Art. VIII, §1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

may be that it is assessed at less than the actual value.²⁶ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on his or her property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

B. Facts & Analysis

On May 25, 2018, the Commission issued an order for hearing containing the following paragraph:

11. REQUIRED EVIDENCE Each party shall provide as an exhibit:

- a. Copies of the County's Property Record File for any parcel a party will assert is a comparable parcel.

*NOTE: A screen shot or print out of a web page is not a property record file. A property record file is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*²⁹

The Commission includes this requirement, and the explanatory note, because the property record file contains detailed information about the qualities and characteristics of the property, its valuation history, and the valuation methodology used by the County Assessor. This information is essential to determine whether properties are comparable for valuation and equalization purposes.

Despite this directive in the order for hearing, the Taxpayer presented only printed copies of web pages as documentary evidence of the valuation of allegedly comparable properties. Having

²⁶ *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁷ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

²⁹ See *Order to Vacate Single Commissioner Designation and Order Amended Order for Hearing and Notice of Hearing*, Case File.

reviewed these exhibits, we find that they do not contain the information necessary to determine whether the properties alleged to be comparable were in fact comparable.

As noted above, the Subject Property in this appeal is a 304 acre agricultural parcel. With the exception of 1.89 acres classified as road, the parcel consists of various subclasses of dryland valued at \$770 to \$800 per acre.³⁰ The Taxpayer offered evidence of five other parcels he asserted were comparable,³¹ arguing that his parcel had a higher per acre value and should be equalized. Of these, three contain various subclasses of grassland, which is typically assessed at a different rate than dryland. Due to the Taxpayer's failure to produce the property record files, we are unable to determine what value was placed upon either the dryland or the grassland for these parcels. For the fourth parcel, the Taxpayer offered only the first page of a multi-page document, which prevents us from determining the total makeup of the parcel or the value placed upon the various subclasses of land.³²

The fifth parcel (the Harimon parcel) appears to be made up of four different classes of dryland and valued at \$415 per acre, as opposed to \$770 to \$800 per acre like the Subject Property. However, the 2017 Reports and Opinions of the Property Tax Administrator for Box Butte County indicate that the county contains three market areas for agricultural property.³³ In Market Area 2, where the Subject Property is located,³⁴ dryland is valued at either \$770 or \$800 per acre, depending upon soil type.³⁵ In Market Area 1, all dryland is valued at \$415 per acre.³⁶ Due to the Taxpayer's use of web page printouts rather than property record cards, the record contains no evidence to show in which market area the Harimon parcel is located. However, its dryland is valued at \$415 per acre. All dryland in Market Area 1 is valued at \$415 per acre. The Taxpayer presented no evidence that the Harimon dryland acres should be assessed at the same value per acre as the dryland acres of the Subject Property. The Taxpayer has also presented no evidence that parcels in different market areas are comparable.

³⁰ Ex. 3:2; the full breakdown of soil types and LCG/LVG codes is listed on the exhibit.

³¹ Ex. 2: 1-13.

³² Ex. 2:7.

³³ *2017 Reports and Opinions of the Property Tax Administrator, Box Butte County*, page 27. The Commission may consider and utilize the Reports and Opinions during the course of any hearing or proceeding or as part of its decision making process. 442 Neb. Admin. Code § 031.02 (06/2011).

³⁴ Ex. 3:2, testimony of Michelle Robinson.

³⁵ *Reports and Opinions*, page 27.

³⁶ *Id.*

The evidence presented by the County Board demonstrates that the Subject Property was assessed in the same manner and at the same rate as comparable dryland in the same market area. The Taxpayer has not presented evidence to show that the determination of the County Board was arbitrary or unreasonable.

IV. 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.

V. ORDER

IT IS ORDERED THAT:

1. The decision of the Box Butte County Board of Equalization determining the value of the Subject Property for tax year 2017 is affirmed.
2. The assessed value of the Subject Property for tax year 2017 is: \$239,123.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Box Butte County Treasurer and the Box Butte County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).
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 2017.

7. This Decision and Order is effective for purposes of appeal on April 29, 2019.³⁷

Signed and Sealed: April 29, 2019

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁷ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.

