

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

William Burdess,  
Appellant,

v.

Washington County Board of Equalization,  
Appellee.

Case Nos: 17A 0005 & 17A 0006

Decision and Order Affirming the  
Determinations of the Washington County  
Board of Equalization

**For the Appellant:**  
William Burdess,  
Pro Se

**For the Appellee:**  
M. Scott Vander Schaaf,  
Washington County Attorney

These appeals were heard before Commissioners James Kuhn and Steven Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of two parcels located in Washington County, Nebraska. The legal descriptions and property record files for the Subject Property can be found at Exhibit 3, page 45 (17A 0005) and Exhibit 4, page 44 (17A 0006).

**II. PROCEDURAL HISTORY**

The Washington County Assessor (the County Assessor) determined that the assessed value of the parcel of the Subject Property in Case No. 17A 0005 was \$363,815 for tax year 2017. William Burdess (the Taxpayer) protested this assessment to the Washington County Board of Equalization (the County Board) and requested an assessed valuation of \$234,155. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$363,815.<sup>1</sup>

The County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 17A 0006 was \$336,545 for tax year 2017. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$222,435. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$336,545.<sup>2</sup>

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<sup>1</sup> Ex 1.

<sup>2</sup> Ex 1.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on January 17, 2019. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged exhibits 1-9.

At the hearing before the Commission, the Taxpayer argued only one reason for his appeals: “The Board’s decision is in violation of Neb. Revised statute 77-1502(5). The statement signed by the chairperson of the county board of equalization did not have a basis upon which the board’s decision was made.”<sup>3</sup>

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>4</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>5</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>6</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

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<sup>3</sup> See, Case File.

<sup>4</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>5</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

arbitrary.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</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>9</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>10</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>11</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>12</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

## IV. VALUATION

### 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.<sup>14</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

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<sup>7</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>8</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>10</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

77-1371, (2) income approach, and (3) cost approach.”<sup>15</sup> Nebraska courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>16</sup> 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.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</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>19</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 2018). 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>20</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>21</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>22</sup>

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

At the hearing before the Commission, the Taxpayer presented only one argument asserting that he was entitled to the relief he has requested: that the County Board did not comply with the

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<sup>15</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>16</sup> *Omaha Country Club* at 180, 829.

<sup>17</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>18</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>20</sup> Neb. Rev. Stat. § 77-1359 (1) (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

<sup>22</sup> Neb. Rev. Stat. § 77-1359 (2) (Reissue 2018).

provisions of Neb. Rev. Stat. § 77-1502(5). The Taxpayer further argues that this result is required based on the Nebraska Supreme Court's determination in *Falatico v. Grant County Board of Equalization*.<sup>23</sup>

Neb. Rev Stat. § 77-1502(5) states:

The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description adequate to identify the real property or a physical description of the tangible personal property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

Each of the appeals filed by the Taxpayer with the Commission was accompanied by a copy of the decision of the County Board appealed from, as required.<sup>24</sup> Each decision consisted of three pages: a Form 422 Property Valuation Protest and Report of County Board of Equalization Action; a Referee's Report and Recommendation 2017; and Attachment Decision of County Board of Equalization for Assessment Year 2017.<sup>25</sup> Each Report has the same Attachment Decision of County Board of Equalization for Assessment Year 2017 which states:

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<sup>23</sup> 262 Neb. 292, 631 N.W.2d 492 (2001)

<sup>24</sup> See, Neb. Rev. Stat. § 77-5013 (Reissue 2018)

<sup>25</sup> Exhibits 1 & 2.

Attachment

Decision of County Board of Equalization for Assessment Year 2017

William Burdess (S1/2NE1/4NW1/4 & SE1/4NW1/4 Sec. 33-18-12 William Burdess was present. Clerk Read Protest, the recommendation of County Referee and Assessor “The property owner is protesting issues similar to those protested in prior years, and presently being addressed by the Appeals Court. I recommend consulting with the County Attorney on this protest.” Burdess brought handouts and read through the information at length, which concerned both protests. Motion by Kruger and second by Dethlefs to concur with Referee and County Assessor’s recommendation to uphold valuation at \$336,545 and refer to Co Atty. Vote-Aye: Dethlefs, Kramer, Lorenzen, Andreasen, and Kruger. Nay: None. Absent: Frahm and Anderson. Motion carried.

William Burdess (S1/2SW1/4 sec 28-18-12) William Burdess was present. Clerk Read Protest, the recommendation of County Referee and Assessor. “Referee stated “The property owner is protesting issues similar to those protested in prior years, and presently being addressed by the Appeals Court. I recommend consulting with the County Attorney on this protest”. Motion by Kruger and second by Dethlefs to concur with Referee and County Assessor’s recommendation to uphold valuation at \$365,815 and refer to Co Atty. Vote-Aye: Dethlefs, Kramer, Lorenzen, Andreasen, and Kruger. Nay: None. Absent: Frahm and Anderson. Motion carried.

The record before the Commission demonstrates that the requirement that the report contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made, has been met. The Form 422 Property Valuation Protest and Report of County Board of Equalization Action is a form produced by the Nebraska Department of Revenue that contains a section to be completed for each of the requirements of Neb. Rev. Stat. § 77-1502. All of the portions of the Form 422 Property Valuation Protest and Report of County Board of Equalization Action have been completed by the Taxpayer, County Clerk, or Chair of the County Board of Equalization to indicate that the requirements of Neb. Rev. Stat. § 77-1502 have been met. The Commission

notes specifically that Exhibits 1 & 2 each contain the certification of the Washington County Clerk that the County Board's report was mailed to the Taxpayer on July 14, 2017, well before the August 2, 2017 deadline required by statute.<sup>26</sup> There was neither a failure to notify the Taxpayer by the statutory deadline or late filing of the appeal after the statutory deadline as found in the *Falotico* determination.<sup>27</sup>

The evidence presented by the Taxpayer do not demonstrate an actual value, agricultural or horticultural value, or special valuation value other than that determined by the County Board or any other basis for the relief requested.

## 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 decisions were arbitrary or unreasonable.

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

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Washington County Board of Equalization determining the value of the Subject Property for tax year 2017 are affirmed.<sup>28</sup>
2. The assessed value of the Subject Property for tax year 2017 is:

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<sup>26</sup> See, Neb. Rev. Stat § 77-1502(6) (Reissue 2018).

<sup>27</sup> See, *Falotico*, 262 Neb. 292, 631 N.W.2d 492 (2001). We further observe that, to the extent *Falotico* ever applied to these appeals, *Falotico* has been superseded by *Cain v. Custer County Bd. of Equal.*, 868 N.W.2d 334, 291 Neb. 370 (2015). In *Cain*, the court wrote, "After our decision in [*Falotico*], the Legislature adopted § 77-1507.01 ... Under § 77-1507.01, a taxpayer who does not receive notice has the opportunity to be heard by filing a petition directly with TERC. Because this opportunity to be heard now exists, we conclude that the failure to provide notice of an increased assessment or the decision of a county board of equalization no longer renders increased assessments void for a denial of due process." 868 N.W.2d at 345.

<sup>28</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.

**Case No. 17A 0005**

Land:	\$247,410
<u>Improvements:</u>	<u>\$116,405</u>
Total:	\$363,815

**Case Nol. 17A 0006**

Land:	\$210,545
<u>Improvements:</u>	<u>\$126,000</u>
Total:	\$336,545

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Washington County Treasurer and the Washington 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 February 14, 2020.<sup>29</sup>

Signed and Sealed: February 14, 2020

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

<sup>29</sup> 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.