

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rex D. Lukow,
Appellant,

v.

Adams County Board of Equalization,
Appellee.

Case No: 17A 0018

Decision and Order

For the Appellant:

Rex D. Lukow,
Pro Se

For the Appellee:

David A. Bergin,
Deputy Adams County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a 320 acre agricultural and horticultural 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 7.

II. PROCEDURAL HISTORY

The Adams County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$1,554,855 for tax year 2017. Rex D. Lukow (the Taxpayer) protested this assessment to the Adams County Board of Equalization (the County Board) and requested an assessed valuation of \$1,199,785. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$1,381,890.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The parties stipulated to the receipt of exchanged exhibits 1 through 20. The Commission held a hearing on July 25, 2018.

¹ Exhibit 1.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.² 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."³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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

² 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).

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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. County Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”⁹ 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.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

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.¹²

“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.”¹³ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

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

⁹ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁸

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”¹⁹

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.²⁰

B. Summary of the Evidence

The Taxpayer disagrees with the way the County Board classified and assessed irrigated acres on the Subject Property. More specifically, the Taxpayer testified that he had considered the practicality of utilizing pivots to help prevent drought conditions in his pasture land by supplementing the water to pasture grass to keep it viable if drought conditions developed. The Taxpayer testified that he made modifications to the topography of the pastures on the Subject property to allow the pivots to “get by” or get around the hills which resulted in low clearance for the pivots on some acres of the Subject Property. The Taxpayer alleged that the assessed values did not account for the topography of the Subject Property.

The Assessor testified that all agricultural and horticultural acres in the county were classified into Land Capability Groups (LCG) using soil overlay maps provided by the Natural Resources Conservation Service (NRCS) input into the County’s Geographic Information System (GIS) maps. The LCGs assigned to each of the soil types on the Subject Property account for the quality of the soil and the slope of the ground.²¹ The Assessor testified that she assessed all agricultural land and horticultural land in Adams County where irrigation is used as

¹⁸ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²¹ See, Exhibit 17

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.”²² The Assessor testified 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 in conformity with the statutes, regulations, and available sales.

To develop his requested valuation for irrigated grassland, the Taxpayer determined the average per acre value of irrigated cropland and the average per acre value of grassland, then determined the average of those two values and requested that amount as the per acre value of irrigated grassland on the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.²³ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer’s approach is a professionally accepted mass or fee appraisal approach. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.²⁴ Additionally, “[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”²⁵

The County Board utilized the values as determined by the Assessor but, as recommended by the Assessor at the time of the protest hearing, moved some of the acres from the irrigated classification to the grassland classification because, as of the date of assessment, not all of these acres were irrigated. The reason for this reduction in value was because the Taxpayer had not completed modifications to the topography under the pivots to allow them to irrigate all of the acres in their circumference as of the effective date for tax year 2017. We agree with the reduction made by the County Board.

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

²³ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁴ See, e.g., *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

²⁵ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

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 decision was arbitrary or unreasonable.

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

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Adams County Board of Equalization determining the value of the Subject Property for tax year 2017 is affirmed.²⁶
2. The assessed value of the Subject Property for tax year 2017 is: \$1,381,890.
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 2017.
7. This Decision and Order is effective for purposes of appeal on December 14, 2018.²⁷

Signed and Sealed: December 14, 2018

Steven A. Keetle, Commissioner

SEAL

Robert W. Hotz, Commissioner

²⁶ 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.

²⁷ 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.

