

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Syngenta Crop Protection, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17C 0186, 18C 0305, 18C 0306,
18C 0307, 18C 0308, 18C 0309, 18C 0310,
18C 0311, 18C 0312, 18C 0313 & 18C 0314

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

For the Appellant:

Christopher A. Stafford,
Fredrikson & Byron, P.A.

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property consists of ten commercial parcels located in Douglas County. The parcels are improved with multiple commercial and industrial buildings. The parcel identification numbers of each of the parcels are found at Exhibits 1 through 11. The property record cards for the Subject Property are found at Exhibits 12 through 22.

II. PROCEDURAL HISTORY

In each of the appeals the Douglas County Assessor (the County Assessor) determined the assessed value of each parcel of the Subject Property and Syngenta Crop Protection, LLC (the Taxpayer) protested that determination to the Douglas County Board of Equalization (the County Board). The County Board then set the value of each parcel of the Subject Property following protests by the Taxpayer. The following table summarizes the original determination by the County Assessor, the value requested by the Taxpayer, and the decision of the County Board in each appeal:

Case No	Assessor	Taxpayer	County Board	Exhibits
17C 0186	\$14,239,600	\$7,223,304	\$ 14,239,600	E1, E12:76
18C 0305	\$ 66,800	\$ 16,500	\$ 66,800	E2, E13:16
18C 0306	\$ 22,400	\$ 8,300	\$ 22,400	E3, E14:16
18C 0307	\$ 256,100	\$ 57,000	\$ 256,100	E4, E15:16
18C 0308	\$ 126,800	\$ 27,200	\$ 126,800	E5, E16:15
18C 0309	\$ 46,100	\$ 1,000	\$ 46,100	E6, E17:11
18C 0310	\$ 299,600	\$ 66,700	\$ 299,600	E7, E18:16
18C 0311	\$14,060,000	\$8,750,000	\$ 14,060,000	E8, E19:58
18C 0312	\$ 1,553,200	\$1,060,000	\$ 1,553,200	E9, E20:16
18C 0313	\$ 1,594,700	\$ 596,000	\$ 1,594,700	E10, E21:13
18C 0314	\$ 57,500	\$ 1,000	\$ 57,500	E11, E22:11

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 1, 2019, where the parties presented evidence and argument. Prior to the hearing, the parties exchanged exhibits. The parties stipulated to the receipt of exhibits 1 through 60.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.¹ 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.”²

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.³

¹ 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).

² *Brenner* at 283, 811.

³ *Id.*

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.⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁶ 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.⁷

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.”⁸ 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.”⁹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

IV. LAW

A. Valuation

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.¹¹

⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ 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).

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

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

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

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

“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.”¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

B. Equalization

“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.”¹⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁸ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁹ 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.²⁰ 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.²¹ 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.²² The constitutional requirement of uniformity in taxation extends to both rate and valuation.²³ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation

¹² *Id.*

¹³ *Omaha Country Club* at 180, 829.

¹⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁵ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁷ *Neb. Const.*, Art. VIII, §1.

¹⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁹ *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²⁰ *Cabela's Inc.*

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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.”²⁴ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁵

V. EVIDENCE AND ANALYSIS

The Taxpayer presented the testimony of Keith E. Nielsen, Real Estate Specialist for the Douglas County Assessor/Register of Deed’s office regarding the assessment of the Subject Properties. Nielsen has been an appraiser since 1995; he has performed field appraisal work in Lincoln and Omaha. Nielsen has undergraduate business degrees in real estate and finance, and a master’s degree in finance. Nielsen has a Residential Evaluation Specialist designation from the International Association of Assessing Officers (IAAO) and is working toward the Certified Assessment Evaluator designation from that same organization. Nielsen has been employed by the County Assessor for 20 years and has been responsible for assessing industrial properties since 2009. Nielsen testified regarding different approaches to value used in different parts of the County. Nielsen testified that he valued the Subject Properties using the cost approach based on their specialized use, location, and multiple uses such as manufacturing, office space, and storage warehouses. When performing the cost approach Nielsen determined the Replacement Cost New, deducted for physical depreciation, and adjusted by a 1.15 “neighborhood adjustment.” Nielsen testified that he did not apply functional or economic depreciation when determining the value of the Subject Properties. Nielsen testified that the neighborhood adjustment was determined using sales data and income and expense data of light manufacturing properties in the local market. Nielsen collected income and expense data from the market and used that data to create an income model for light industrial properties in western Douglas County. He reviewed sales data from the same area to confirm the accuracy of the income model. The income model and sales data were then used to determine the neighborhood adjustment.

The Taxpayer presented the testimony of Todd Taylor, location manager for the Subject Property responsible for overseeing production operations, employee development, and HR for the Taxpayer. Taylor testified regarding the Taxpayer’s use of the Subject Property and general

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁵ *Id.* at 673, 94 N.W.2d at 50.

economic factors in the seed corn business since the late 1980s. Taylor testified regarding the Taxpayer's use of the buildings on the parcel in Case Nos. 17C 0186 & 18C 0311, the use of the buildings on parcels in Case Nos. 18C 0308 and 18C 0313, and the use of the land on parcels 18C 0305, 18C 0306 and 18C 0307. Taylor discussed the differences between the way buildings built in the late 1980s and early 1990s are used and the way buildings built in 2007 are used on the Subject Property, but he did not provide any information to quantify the impact that these differences may have on the value of those buildings.

The Taxpayer presented the testimony of Ron Niceswanger, the non-income tax manager for Syngenta. Niceswanger manages the property taxes and sales and use taxes for three different entities including the Taxpayer. Additionally, Niceswanger testified that he appeals property taxes for those entities, including filing the valuation appeals before the Commission. Niceswanger testified that his opinion of value for the Subject Property was the value requested in each of the ten memoranda found in Exhibits 30 through 39 and the document purporting to be a "sales comp analysis" found in Exhibit 27. Niceswanger testified that he commissioned the creation of the documents found in Exhibits 27, 28, and 30 through 39 as a value analysis of the Subject Property.

The Taxpayer argues that the presumption in favor of the County Board's determination has been overcome because no functional or economic depreciation was applied by the County Assessor when determining assessed value and that the neighborhood adjustment applied by the County Assessor was not based on market data. Taylor's testimony pointed out some characteristics of the Subject Property or the market in general and raised the question of whether functional or economic depreciation may be applicable to a few buildings located on the Subject Property, but he provided no information to quantify the impact of functional or economic depreciation on the value of the Subject Property. Without information as to the appropriate amount of either functional or economic depreciation to be applied, the Commission cannot find that the lack of functional or economic depreciation in the County Assessor's methodology is unreasonable or arbitrary. Nielsen testified as to the market factors that he reviewed when determining the neighborhood adjustment applied to the Subject Property but testified that the specifics of those calculations were contained in his work files, which were not offered for the Commission to review and analyze in these appeals.

The Taxpayer next alleges the testimony of Taylor and Niceswanger constitute an owner's opinion of value demonstrating by clear and convincing evidence that the value of the Subject Property determined by the County Board is unreasonable or arbitrary. An owner may testify to the worth of his or her property if the owner is familiar with the property and knows the worth. A corporate officer or president is not, as such, qualified to testify as to value of corporate property. In order to qualify, he or she must be shown to be familiar with the property and have a knowledge of values generally in the vicinity.²⁶ The record before the Commission fails to demonstrate such familiarity in connection to testimony of the value of the Subject Property. Taylor, while testifying to a familiarity with the structures located on several of the parcels and their uses, did not offer any opinion of the value of the Subject Property. Niceswanger gave an opinion of value but failed to demonstrate a familiarity with the Subject Property or knowledge of values generally in the vicinity in order to qualify that opinion. The record and testimony do not indicate Niceswanger's education, training, or experience in the field of property valuation and assessment. Niceswanger testified that for his opinion of value for the Subject Properties he relied on the memorandum and other documents that he commissioned as a value analysis of the Subject Property; his reliance was misplaced.

The documents found in exhibit 28 indicate that they are copyrighted and licensed to Ducharme, McMillen & Associates, Inc. and exhibits 30 through 39 bear a header and footer for DMA- Ducharme, McMillen & Associates, Inc. Niceswanger testified that these documents along with exhibit 27 were prepared at his direction and under his supervision. The record does not indicate what DMA- Ducharme, McMillen & Associates, Inc. is or how Mr. Niceswanger directed and supervised their preparation of the exhibits. Exhibits 30-39 indicate that they are memoranda from "Daniel Roche, Director" and "Stephanie Nyhus, Sr. Tax Manager" but the record before the Commission does not demonstrate what, if any, education, training, or experience that these individuals have in relation to property valuation in general or the value of the Subject Properties.

The Commission's review of the memoranda reveals that the basis for the values requested in the memorandum are vague or incomplete. Exhibit 32 and 35 each request a value of \$1,000. Exhibit 32 purports to rely on parcel number 241368006, but no Property Record File (PRF)

²⁶ *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002) (Citations omitted).

from the assessor's office or other information regarding that parcel is provided. Exhibit 35 relies on unspecified other unusable property. Exhibit 33 proports to rely on a nearby property valued at \$1.62 per square foot but no PRF or other information was offered to show the characteristics of that property or its comparability to the Subject Property. Exhibits 36, 37 and 38 rely on parcel number 010587000 without providing a PRF and add \$500 for a building on one of the parcels. Exhibit 39 bases its requested assessment on unspecified other similar land plus \$1,000 per building.

Only three of the ten memoranda allege that at least one of the three professionally accepted mass appraisal methods were used to determine the requested value. Exhibit 31 alleges that the income approach for the Subject Property in Case No 18C 0313 should be reworked using numbers derived from a comparable parcel, but neither the PRF nor other information regarding the comparability of that parcel is presented. Exhibit 34 contains a "sales comp analysis" that does not make any adjustment for quality, condition or style of the sales.²⁷ In addition there is no indication of the basis for the adjustments that are made to the properties to arrive at the adjusted values. Three of the four sales pose concerns as one of the sales is not actually a sale but a listing,²⁸ one of the sales resulted in the subsequent tax exemption of the property,²⁹ and one of the sales involved a Tax Increment Financing agreement and conversion to apartments,³⁰ which show that these "sales" are not good indicators of the market value of the Subject Property, an active light industrial property. Exhibit 34 also includes an income approach performed with values whose basis are not shown to be related to the Subject Property or its market.³¹

Exhibit 30 addresses the main parcel of the Subject Property and proports to utilize all three professionally accepted mass appraisal methods to determine the requested value for the Subject Property. The "cost approach" contained in the memorandum is little more than taking the Assessor's values and increasing the depreciation applied. The income approach again contains no basis for the numbers plugged into the spreadsheet, and only one sale is presented without adjustment or relation to the Subject Properties.

The "Sales Comp Analysis" presented in exhibit 27 does not indicate who prepared the document or the basis of the adjustments applied to the sales to arrive at the proposed value.

²⁷ E34:3

²⁸ E34:3

²⁹ See E49 & E 50.

³⁰ See E51, E52 and E53

³¹ E34:5.

Niceswanger testified that he was unfamiliar with the condition of the properties that he previously stated were the most comparable to the Subject Property. Additionally, Exhibit 28 and the PRF for the property located on West Sargent St. indicate that the property sold in 2015 for significantly more than the sales price from 2013. The analysis in exhibit 27 uses the older, lower price sale of the West Sargent St. property in its analysis, but no explanation for this is offered.³²

The Commission, after reviewing the record and testimony attributes no weight to the memoranda or “sales comp analysis” found in exhibits 27 through 39. As these exhibits are the entire basis for Niceswanger’s opinion of value found in the testimony or exhibits before the Commission the Commission must also give no weight to his opinion of value as a corporate officer.

The Taxpayer has failed to demonstrate that the value placed upon the Subject Property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary.

VI. 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.

VII.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 and 2018 are affirmed.³³

³² See, E45, E28:13.

³³ 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.

2. The taxable value of the Subject Property in Case No. 17C 0186 for tax year 2017 is:

Land:	\$ 161,200
<u>Improvement:</u>	<u>\$14,078,400</u>
Total:	\$14,239,600

3. The Taxable value of the Subject Property for tax year 2018 is:

Case No. 18C 0305

<u>Land:</u>	<u>\$ 66,800</u>
Total:	\$ 66,800

Case No. 18C 0306

<u>Land:</u>	<u>\$ 22,400</u>
Total:	\$ 22,400

Case No. 18C 0307

Land:	\$ 228,600
<u>Improvement:</u>	<u>\$ 27,500</u>
Total:	\$ 256,100

Case No. 18C 0308

Land:	\$ 46,100
<u>Improvement:</u>	<u>\$ 80,700</u>
Total:	\$ 126,800

Case No. 18C 0309

<u>Land:</u>	<u>\$ 46,100</u>
Total:	\$ 46,100

Case No. 18C 0310

<u>Land:</u>	<u>\$ 299,600</u>
Total:	\$ 299,600

Case No. 18C 0311

Land:	\$ 161,200
<u>Improvement:</u>	<u>\$13,898,800</u>
Total:	\$14,060,000

Case No. 18C 0312

Land:	\$ 245,300
<u>Improvement:</u>	<u>\$ 1,307,900</u>
Total:	\$ 1,553,200

Case No. 18C 0313

Land:	\$ 52,600
<u>Improvement:</u>	<u>\$ 1,542,100</u>
Total:	\$ 1,594,700

Case No. 18C 0314

<u>Land:</u>	<u>\$ 57,500</u>
Total:	\$ 57,500

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2017 and 2018.
8. This Decision and Order is effective for purposes of appeal on June 4, 2021.³⁴

Signed and Sealed: June 4, 2021

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁴ 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.