

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael Hanus,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0445, 18R 0362, 18R 0398,
18SV 0002, 19R 0584 & 19SV 0003

Decision and Order Reversing the Decisions
of the Douglas County Board of
Equalization

For the Appellant:

Michael Hanus, Pro Se

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

The appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a 20.15 acre parcel, improved with a 3,008 square foot home, built in 1890, and outbuildings, located at 13808 N. 324th Street, Douglas County, Nebraska. The legal description of the Subject Property is found at Exhibit 7, page 25. The property record card for the Subject Property is found at Exhibits 7-12.

II. PROCEDURAL HISTORY

A. Tax Year 2017

The Douglas County Assessor determined that the assessed value of the Subject Property was \$315,700 for tax year 2017.¹ Michael Hanus (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$245,700.² The Taxpayer

¹ For a number of years prior to tax year 2017, including tax year 2016, the Subject Property had received special valuation, wherein the parcel of land, excluding land associated with a building or enclosed structure located on the parcel, was deemed to be primarily used for agricultural or horticultural purposes per Neb. Rev. Stat. § 77-1343 and Neb. Rev. Stat. § 77-1359. The assessment for tax year 2017 effectively disqualified the land from special valuation, assessing each unimproved acre at \$8,000 per acre as excess rural residential acres.

² Exhibit 1. The County Board decision, while reducing the overall taxable value of the parcel, did not alter the assessment of the unimproved acres. The reduction made by the County Board was only a reduction to the taxable value of the improvements, including the home and a pole shed.

appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission).³

B. Tax Year 2018

For tax year 2018, the County Assessor determined that the assessed value of the Subject Property was \$245,700. The Taxpayer protested this assessment to the County Board. On August 7, 2018, the County Board determined that the taxable value of the Subject Property was \$245,700.⁴ The Taxpayer appealed the decision of the County Board to the Commission.⁵

On September 11, 2018, the County Board adopted a Resolution, determining that 5.02 acres of the Subject Property should receive special valuation.⁶ The Taxpayer appealed that determination on September 30, 2018.⁷

In a Resolution adopted December 18, 2018, the County Board denied the Taxpayer's Protest of what was called a Certified Assessment Correction.⁸ That denial was also appealed by the Taxpayer on January 11, 2019.⁹

C. Tax Year 2019

For tax year 2019, the County Assessor determined that the assessed value of the Subject Property was \$247,500. The Taxpayer protested this assessment to the County Board. On August 6, 2019, the County Board determined that the taxable value of the Subject Property was \$247,500.¹⁰ The Taxpayer appealed the decision of the County Board to the Commission.¹¹

On September 10, 2019, the County Board adopted a Resolution, upholding the County Assessor's recommendation to disqualify the Subject Property from receiving special valuation.¹² In an appeal dated October 1, 2019, the Taxpayer appealed that determination to the Commission.¹³

The Commission held a consolidated hearing for these six appeals on February 5, 2020. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission.

³ Case No. 17R 0445.

⁴ Exhibit 2.

⁵ Case No. 18R 0362.

⁶ See Case File for Case No. 18SV 0002. The Resolution referred to special valuation as "greenbelt."

⁷ *Id.*

⁸ Exhibit 3.

⁹ See Case File for Case No. 18R 0398.

¹⁰ Exhibit 5, Case No. 19R 0584.

¹¹ See Case File for Case No. 19R 0584.

¹² Exhibit 6. The Resolution referred to special valuation as "greenbelt."

¹³ See, Case File for Case No. 19SV 0003.

III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.¹⁴ 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.”¹⁵

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.¹⁶

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.¹⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁸

A taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁹ 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.²⁰

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

¹⁴ 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).

¹⁵ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁶ *Id.*

¹⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁹ 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).

²⁰ *Botdorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”²¹ 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.”²² The Commission’s Decision and Order shall include findings of fact and conclusions of law.²³

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.²⁴

“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.”²⁵ Nebraska courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”²⁶ 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.²⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁹

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

²¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

²² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

²³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

²⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁶ *Omaha Country Club* at 180, 829.

²⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

²⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

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.³⁰

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³¹ 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.³²

B. Summary of the Evidence

Michael Hanus testified that the Subject Property had received special valuation up to and including tax year 2016. He asserted that the special valuation should have continued for tax years after 2016 because he continued to primarily use the parcel for agricultural purposes no less than it was used prior to 2017. According to Hanus, for each of the three tax years, the continued agricultural uses included growing and harvesting berries, eggs, fruit, flowers, honey, nuts, plants, vegetables, and woody florals. He testified that bee and other pollinator habitats were maintained, including 10 to 20 hives, that clover was planted to attract pollinating insects, and that a productive vegetable garden was grown. Hanus emphasized that many of these agricultural and horticultural products were sold through various modes, including farmers’ markets. Hanus provided evidence of income relating to these products with Schedule F, Profit or Loss From Farming for tax years 2016,³³ 2017,³⁴ and 2018.³⁵ In each year, profits were reported for both Cathy Hanus and Michael Hanus. Their combined reported profits were \$2,550, \$2,651, and \$2,434 respectively for each of the three years. In addition to showing an ongoing profit from farming, Hanus provided extensive documentation regarding the agricultural and horticultural uses of the parcel.³⁶ Such documentation came from the U.S. Department of

³⁰ Neb. Rev. Stat. § 77-1359 (1) (Reissue 2018).

³¹ Neb. Rev. Stat. § 77-132 (Reissue 2018).

³² Neb. Rev. Stat. § 77-1359 (2) (Reissue 2018).

³³ Exhibit 13:52.

³⁴ Exhibit 13:53.

³⁵ Exhibit 13:54.

³⁶ Exhibit 13.

Agriculture (USDA), Farm Service Agency,³⁷ and the Nebraska Department of Agriculture,³⁸ and the Practical Farmers of Iowa.³⁹

Stan Mlotek was called to testify by the County Board. Mlotek is an employee with the County Assessor and holds the State Assessor Certificate. He is also a licensed appraiser. Mlotek testified that he inspected the Subject Property on March 13, 2015 and each year thereafter. He walked the 20 acre property, but he did not enter the residence. Mlotek stated his belief that almost all of the activity on the parcel that would be considered agricultural occurred on the acre associated with the residence, which was described as a vegetable garden. He testified that he observed some active beehives, but that they were in disrepair. He also observed grasses, but saw no livestock pens, fencing, or grazing. Mlotek said he identified 2.93 acres of dryland. Mlotek testified that it was his opinion that beginning with tax year 2017 the parcel no longer qualified for special valuation.

Based upon all of the evidence received, the Commission finds that the Taxpayer has presented sufficient evidence to prove that the Subject Property should qualify for special valuation for tax years 2017,⁴⁰ 2018, and 2019.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumptions that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of the County board are vacated and reversed.

³⁷ Exhibit 13:15, 42-47: Farm Records, Report of Commodities; Farm Summaries, and Farm and Tract Detail Listings.

³⁸ Exhibits 13:33-37: Showing that Michael Hanus was issued a Pesticide Applicator License, that Cathy Hanus had been issued Nursery Stock Distributor Licenses, and that Cathy Hanus was a Certified Vendor under the Senior Farmers' Market Nutrition Program (SFMNP) and the Women, Infants, and Children Farmers' Market Nutrition Program (WIC).

³⁹ Exhibit 13:48.

⁴⁰ The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal. Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2017, 2018, and 2019 are vacated and reversed.⁴¹
2. The assessed value of the Subject Property in Case No. 17R 0445 for tax year 2017 is:

Land	\$ 67,622 ⁴²
Improvements	<u>\$ 70,700</u>
Total	\$138,322

3. The assessed value of the Subject Property in Case Nos. 18R 0362, 18R 0398, and 18SV 0002 for tax year 2018 is:

Land	\$ 66,940 ⁴³
Improvements	<u>\$ 70,700</u>
Total	\$137,640

4. The assessed value of the Subject Property in Case Nos. 19R 0584 and 19SV 0003 for tax year 2019 is:

Land	\$ 62,226 ⁴⁴
Improvements	<u>\$ 70,700</u>
Total	\$132,926

⁴¹ 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.

⁴² See Exhibit 7:3. Since there was sufficient evidence that no dryland existed on the Subject Property for tax year 2017, the Commission converted the "Ag Code" of 1d1 to 1g1, and 2d to 2g, valuing each as grassland. To determine the value per acre, the Commission utilized the average acre value comparison from 2017 Reports & Opinions of the Property Tax Administrator, Douglas County, page 39.

⁴³ See Exhibit 7:3. Since there was sufficient evidence that no dryland existed on the Subject Property for tax year 2018, the Commission converted the "Ag Code" of 1d1 to 1g1, and 2d to 2g, valuing each as grassland. To determine the value per acre, the Commission utilized the average acre value comparison from 2018 Reports & Opinions of the Property Tax Administrator, Douglas County, page 31.

⁴⁴ See Exhibit 7:3. Since there was sufficient evidence that no dryland existed on the Subject Property for tax year 2019, the Commission converted the "Ag Code" of 1d1 to 1g1, and 2d to 2g, valuing each as grassland. To determine the value per acre, the Commission utilized the average acre value comparison from 2019 Reports & Opinions of the Property Tax Administrator, Douglas County, page 47.

5. 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.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2017, 2018, and 2019.
9. This Decision and Order is effective for purposes of appeal on August 27, 2020.⁴⁵

Signed and Sealed: August 27, 2020

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴⁵ 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.