

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chris Van Egmond,
Appellant,

v.

Antelope County Board of Equalization,
Appellee.

Case No: 17R 0149

Decision and Order

For the Appellant:
Chris Van Egmond,
Pro Se

For the Appellee:
Joseph Abler,
Antelope County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Antelope County. The parcel is improved with a 1,024 square foot home. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Antelope County Assessor determined that the assessed value of the Subject Property was \$79,910 for tax year 2017. Chris Van Egmond (the Taxpayer) protested this assessment to the Antelope County Board of Equalization (the County Board) and requested a lower assessed valuation. The Antelope County Board determined that the taxable value of the Subject Property for tax year 2017 was \$79,910.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 2, 2018. Exhibits 1 through 13 were admitted, and Exhibits 14 through 27 were not admitted, for the reasons stated on the record.

¹ Ex 1.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a 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) (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).

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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. Cty. 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 & 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.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 Nebraska courts have held that actual 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 the Nebraska Revised 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.¹⁸ Agricultural land and horticultural land means a

⁹ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹² Neb. Rev. Stat. §77-112 (Reissue 2018).

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

¹⁴ *Omaha Country Club* at 180, 829.

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. §77-1301(1) (Reissue 2018)

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. §77-201(2) (Reissue 2018).

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.¹⁹

“Parcel” means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²⁰ 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.²¹

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.²² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²³ 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.²⁴ 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.²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

B. Summary of the Evidence

The Subject Property consists of a 1,024 square foot one-story home and several outbuildings located on 9.84 acres of land. While the Property Record File (PRF) contains an agricultural land inventory table, this table indicates that the land is associated with the improvements and that

¹⁹ Neb. Rev. Stat. §77-1359(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. §77-132 (Reissue 2018).

²¹ Neb. Rev. Stat. §77-1359(2) (Reissue 2018).

²² *Neb. Const.*, Art. VIII, §1.

²³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁴ *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).

²⁵ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

they are therefore not agricultural land acres.²⁷ The Taxpayer and the Assessor both indicted that there are more than two outbuildings located on the Subject Property; however, only two of these buildings have been determined to have value and are therefore listed on the PRF.²⁸

The Taxpayer alleged that the land value of the Subject Property should be lowered because it was lowered by the Commission in 2015. The courts have held that the assessed value for real property may be different from year to year, dependent upon the circumstances.²⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation. Additionally, the alleged basis for the reduction in land values was equalization with the tax year 2015 assessed value of another property in Antelope County, and the record before the Commission in the present appeal does not contain evidence of the assessed value of any property other than the Subject Property with which to compare land valuations.

The Taxpayer alleged that the physical characteristics listed on the PRF for the Subject Property were not correct. The Taxpayer alleged that the square footage designated as a "solid wall porch" was not totally enclosed and that the home did not have hot water radiator heat. The Subject Property was inspected by the County Assessor's office in 2012 and at that time the characteristics of the property and its improvements were determined. The Taxpayer did not offer evidence to demonstrate the actual characteristics of the "solid wall porch" portion of the Subject Property as of the assessment date or that they had changed since the 2012 inspection. The Taxpayer did not offer evidence of the entire form of heating system that the Subject Property had, indicating only that it was 80% wood,³⁰ and did not quantify the impact that an alternate form of heat would have on the value of the Subject Property. The evidence demonstrates that the Taxpayer has refused to allow the County Assessor to come onto his property since the 2012 inspection to determine if the characteristics of the Subject Property are different from those listed on the PRF.

The Taxpayer alleged that the land value of the Subject Property was out of line with the land values in the rest of the state. The Taxpayer did not present any evidence of the value of home site or building site acres within the state other than the assessed value of the Subject Property.

²⁷ E2:3, see, Neb. Rev. Stat. §77-1359(1) (Reissue 2018).

²⁸ E2:3

²⁹ See, *Affiliated Foods Coop v. Madison Co. Bd of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

³⁰ See E4:2

Additionally, the Taxpayer did not provide any information regarding sales of home site or building site acres to allow the Commission to analyze this claim.

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 Antelope County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.³¹
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 34,725
Improvements:	\$ 42,445
<u>Outbuildings:</u>	<u>\$ 2,740</u>
Total:	\$ 79,910

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Antelope County Treasurer and the Antelope 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 July 17, 2019.³²

³¹ 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.

³² 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.

Signed and Sealed: July 17, 2019

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner