

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

Jerald H. Schreiber,

Farmer Hog Co., Inc.,  
Appellants,

v.

Platte County Board of Equalization,  
Appellee.

Case No: 18A 0059

Case No. 18A 0060

Decision and Order Reversing  
the Determinations of the  
Platte County Board of Equalization

**For the Appellant:**

Jerald H. Schreiber,  
*Pro se*

**For the Appellee:**

Elizabeth Lay,  
Deputy Platte County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. PROCEDURAL HISTORY**

The Subject Property in these appeals consists of two agricultural parcels located in Platte County; each of the two parcels is improved with various grain bins and buildings used for hog farming. The Subject Property in Case No. 18A 0059 is an 80 acre parcel; the legal description and property record card for this parcel are found at Exhibit 3. The Subject Property in Case No. 18A 0060 is a 12.9 acre parcel; the legal description and property record card for this parcel are found at Exhibit 4.

The Platte County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 18A 0059 was \$619,405 for tax year 2018.<sup>1</sup> Jerald H. Schreiber (the Taxpayer<sup>2</sup>) protested this assessment to the Platte County Board of Equalization (the County Board) and requested an assessed valuation of \$552,803.<sup>3</sup> The Platte County Board determined that the taxable value of the Subject Property for tax year 2018 was \$614,225, consisting of \$508,295 for land and \$105,930 for improvements.<sup>4</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> We will refer to Schreiber and Farmer Hog Co. Inc., of which Schreiber is an officer, collectively as “the Taxpayer.”

<sup>3</sup> Exhibit 1.

<sup>4</sup> *Id.*

The County Assessor determined that the assessed value of the Subject Property in Case No. 18A 0060 was \$313,085 for tax year 2018.<sup>5</sup> The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$256,480.<sup>6</sup> The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$306,750, consisting of \$47,480 for land and \$259,270 for improvements.<sup>7</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 31, 2019, at which the appeals were consolidated for hearing. The parties stipulated to the admission of Exhibits 1 through 4. Exhibits 5 and 8 were admitted in the course of the hearing. Exhibit 7 was offered but not received for the reasons described on the record. Exhibit 6 was marked but not offered.

## II. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>8</sup> A presumption exists that the County Board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>9</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>10</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 arbitrary.<sup>11</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>12</sup>

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<sup>5</sup> Exhibit 2.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> 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).

<sup>9</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>10</sup> Id.

<sup>11</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>12</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>13</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>14</sup>

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>15</sup> The Commission may take notice of judicially cognizable facts, or 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>16</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>17</sup>

### III. ANALYSIS AND OPINION

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>18</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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>19</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>20</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has

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<sup>13</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>14</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>15</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>20</sup> *Omaha Country Club* at 180, 829.

the same meaning as assessed value.<sup>21</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>22</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>23</sup> Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>24</sup>

### **Land**

The Taxpayer asserted that the land component of the Subject Properties increased at a rate greater than other farms in the market area. However, the assessment of agricultural land in Nebraska involves classifying land into land capability groups based upon soil types.<sup>25</sup> The County Assessor determined the value of the land component of both parcels of the Subject Property by classifying the land into land capability groups based on the soil type. Each land capability group was assigned a per acre value based on sales data from the market area of the Subject Property. Because different parcels contain mixes of different soils, and because different soil-based land capability groups change in value at different rates based on market activity, it is neither unusual nor unlawful for different parcels to change in value at different rates.

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 the 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.<sup>26</sup> The Taxpayer did not produce competent evidence that the increase in value of the Subject Property relative to other properties in the market area was caused by any factors aside from normal market forces.

### **Improvements: 18A 0059**

For Case No. 18A 0059, the evidence showed that items 15 and 16 on the County Assessor's Property Record Card, both steel bins placed on new foundations by the Taxpayer in 2005 have been assessed with 70% depreciation since 2006. On that basis, the Taxpayer asserted that

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<sup>21</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>22</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

<sup>25</sup> See 350 Neb. Admin. Code Ch. 14 § 004.08 for the Department of Revenue's regulations related to classification of agricultural land for assessment purposes.

<sup>26</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

depreciation should have increased since 2006. We cannot determine from the record why the County Assessor applied 70% depreciation initially, why the depreciation has not changed since 2006, and why item 23, also a steel bin placed on a new foundation by the Taxpayer in 2006, is assessed with only 50% depreciation. However, based upon the evidence presented, we cannot conclude that the Taxpayer has shown that the County Board’s valuation of these items was arbitrary or unreasonable.

The Subject Property in Case No. 18A 0059 also includes a detached garage assessed at \$14,110.<sup>27</sup> The Taxpayer’s undisputed testimony was that this garage was destroyed prior to the assessment date of January 1, 2018. Accordingly, the improvement value for 18A 0059 should be adjusted downward by \$14,110 for a total improvement value of \$91,820.<sup>28</sup>

**Improvements: 18A 0060**

The Taxpayer asserted that some of the improvements on the Subject Property in Case No. 18A 0060 were over-assessed due to inadequate physical depreciation applied in the County Assessor’s cost model. The assessed value of this parcel included the values of six bulk hopper bins, referred to as items 06, 07, 09, 10, 11, and 12 on the County Assessor’s Property Record Card.<sup>29</sup> The County Assessor determined the value for each of these bins by multiplying the number of units (i.e., bushel storage capacity) by a replacement cost of \$8.50 per unit to determine the replacement cost new. The County Assessor then applied depreciation of 85% to items 06 and 07 and 50% to items 09, 10, 11, and 12. According to the County Assessor’s testimony at the hearing, the correct depreciation amount for items 06, 07, 09, and 10 was 95%. The correct depreciation amount for items 11 and 12 was 44%. The evidence supports the Taxpayer assertion as to items 06, 07, 09, 10, 11, and 12 on the County Assessor’s Property Record Card for Case No. 18A 0060. The changes are shown as adjusted depreciation and adjusted RCNLD on the table below.<sup>30</sup>

Imp. #	Units	Cost	RCN	Previous Depreciation	Adjusted Depreciation	Previous RCNLD	Adjusted RCNLD
06	240	8.5	2040	85%	95%	305	102
07	240	8.5	2040	85%	95%	305	102
09	240	8.5	2040	50%	95%	1020	102

<sup>27</sup> See Exhibit 3:9.

<sup>28</sup> See Exhibit 1. \$105,930 - \$14,110 = \$91,820.

<sup>29</sup> Exhibit 4:8.

<sup>30</sup> Compare with Exhibit 4:8. RCNLD is replacement cost new less depreciation.

10	160	8.5	1360	50%	95%	680	68
11	160	8.5	1360	50%	44%	680	762
12	160	8.5	1360	50%	44%	680	762
<b>TOTAL</b>						<b>3670</b>	<b>1898</b>

These changes result in a net reduction of \$1,772 from the taxable value of the improvement component of the Subject Property, for a total improvement value of \$257,498.<sup>31</sup>

No other changes to the value of either parcel are supported by clear and convincing evidence.

#### IV. CONCLUSION

The Commission finds that there is 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 clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.<sup>32</sup>

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

#### V. ORDER

IT IS ORDERED THAT:

1. The decisions of the Platte County Board of Equalization determining the value of the Subject Property for tax year 2018 are vacated and reversed.
2. The assessed value of the Subject Property for tax year 2018 is:

<u>18A 0059</u>		<u>18A 0060</u>	
Land	\$508,295	Land	\$ 47,480
<u>Improvements</u>	<u>\$ 91,820</u>	<u>Improvements</u>	<u>\$257,498</u>
Total	\$600,115	Total	\$304,978

<sup>31</sup> See Exhibit 2. \$259,270 – 1,772 = \$257,498.

<sup>32</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.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Platte County Treasurer and the Platte 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 2018.
7. This Decision and Order is effective for purposes of appeal on October 5, 2020.<sup>33</sup>

Signed and Sealed: October 5, 2020

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Robert W. Hotz, Commissioner

SEAL

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Steven A. Keetle, Commissioner

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<sup>33</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.