

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Douglas D. Sunderman,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case Nos: 18A 0188, 18A 0189, 18A 0192,
18A 0193, 18A 0194, 18A 0195, 18A 0196,
18A 0197, 18A 0200, 18A 0201
& 18A 0202

Decision and Order Affirming the
Determinations of the Madison County
Board of Equalization

For the Appellant:
Douglas D. Sunderman,
Pro Se

For the Appellee:
Joseph Smith,
Madison County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property consists of eleven agricultural parcels located in Madison County. The legal descriptions and property record cards for the Subject Property are found at Exhibits 12 through 22.¹

II. PROCEDURAL HISTORY

In each of these eleven appeals, the Madison County Assessor (the County Assessor) determined the assessed value of each parcel of the Subject Property for tax year 2018. Douglas D. Sunderman (the Taxpayer) protested the assessments to the Madison County Board of Equalization (the County Board) and requested a lower assessed value. The County Board determined the taxable value of the Subject Property. The County Assessor's value, the Taxpayer's requested value, and the County Board's determined taxable value are shown in the following table.²

Case No.	Parcel ID	Assessor	Taxpayer	County Board
18A 0188	590135082	\$878,430	\$710,992	\$878,430
18A 0189	590135104	\$745,776	\$590,344	\$745,776

¹ These exhibits are arranged sequentially by case number. For example, Exhibit 12 corresponds to 18A 0188, Exhibit 13 corresponds to 18A 0189, and so forth.

² The data in the table are taken from Exhibits 1 through 11; the exhibits are arranged sequentially by case number.

Case No.	Parcel ID	Assessor	Taxpayer	County Board
18A 0192	590135392	\$79,737	\$59,518	\$79,737
18A 0193	590159763	\$352,878	\$292,000	\$352,878
18A 0194	590212915	\$69,350	\$58,400	\$69,350
18A 0195	590159089	\$764,820	\$606,226	\$764,820
18A 0196	590159577	\$203,630	\$162,060	\$203,630
18A 0197	590159585	\$1,176,435	\$972,360	\$1,176,435
18A 0200	590164643	\$1,263,066	\$972,360	\$1,263,066
18A 0201	590142798	\$826,994 ³	\$619,231	\$792,141
18A 0202	590159844	\$793,436	\$648,240	\$793,436

The Taxpayer appealed each of these decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 29, 2019, with Commissioner Hotz presiding. Exhibits 1 through 63 and 65 were offered and admitted; Exhibit 64 was not offered. The Commission also utilized the 2018 Reports and Opinions of the Property Tax Administrator for Madison County without objection.⁴

III. STANDARD OF REVIEW

The Commission’s review of the determination by a county board of equalization is *de novo*.⁵ 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.⁶

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.⁷

³ In relation to the Protest proceeding, the County Assessor recommended an assessed value of \$792,141 because of the presence of Conservation Reserve Program (CRP) land.

⁴ See 442 NAC Ch 5 §031.02.

⁵ 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).

⁶ *Brenner* at 283, 811 (Citations omitted).

⁷ *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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes the County Board's valuation was unreasonable or arbitrary.¹¹

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.¹² The Commission may take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

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.¹⁵

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

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁵ 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 Neb. Rev. Stat. §77-1371, (2) income approach, and (3) cost approach.¹⁶ Actual value, market value, and fair market value mean exactly the same thing.¹⁷ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. §77-201 and has the same meaning as assessed value.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

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.²¹ 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.²² If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.²³

B. Facts & Analysis

Two witnesses testified at the hearing. Stephen Sunderman (Mr. Sunderman) is the son of the Taxpayer and serves as president of the family farming and cattle operation. Mr. Sunderman testified the Taxpayer purchased the Subject Property in Case No. 18A 0201 for \$828,262 (approximately \$5,419 per acre) in October 2017. The Taxpayer urged the Commission to determine that this was the actual value of that parcel.²⁴ Mr. Sunderman prepared a list of 41 sales of agricultural land in the Madison County that had taken place during the three-year time period between October 1, 2014, and September 30, 2017.²⁵ He grouped the sales of properties in

¹⁶ *Id.*

¹⁷ *Omaha Country Club* at 180, 829 (2002).

¹⁸ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²¹ *Neb. Const.*, Art. VIII, § 1.

²² *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁴ Under Nebraska law, agricultural land is assessed at 75% of its actual value. See Neb. Rev. Stat. § 77-201 (Reissue 2018).

²⁵ Ex. 65. Some of these sales involve multiple parcels.

order to calculate a per acre value for the parcels by majority land use. He also eliminated sales of parcels he deemed not comparable to the Subject Property for reasons including the existence of leases for the production of seed corn, location within a two-mile radius of the city limits of Norfolk, or lack of an open sale. Using this methodology, he concluded that the actual value for parcels with a majority land use of dry cropland was \$4,365 per acre, the actual value for parcels with a majority land use of grassland was \$2,681 per acre, and the actual value for parcels with a majority land use of irrigated cropland was \$5,760 per acre. He testified that, in his opinion, the proportion of higher quality soils to lower quality soils affected the market value of parcels.

Jeff Hackerott, the County Assessor, testified on behalf of the County Board. Mr. Hackerott has served as County Assessor since 2003 and holds the State Assessor's Certificate. He testified that he assessed agricultural property in the county by assembling a sales file of the same 41 sales analyzed by Mr. Sunderman. In Mr. Hackerott's analysis, sales that were not arm's-length transactions and sales with prices that appeared influenced by non-agricultural uses were culled from consideration prior to the assembly of the sales file. Mr. Hackerott determined whether a sale was influenced by non-agricultural used based on whether the sales price fell within a range he considered normal for the market area. Mr. Hackerott then analyzed each parcel on the basis of land use, soil types, and land capability groups (LCG),²⁶ as required by Nebraska law.²⁷ Based on this analysis, he determined the per acre value for each LCG within the market area of the Subject Property. These values were then applied to the Subject Property based on the LCGs of which each parcel was composed.²⁸ Mr. Hackerott testified that he performed this assessment of the Subject Property in accordance with the laws and regulations of the State of Nebraska.

We begin with the Taxpayer's assertion that the October 2017 purchase price of the Subject Property for 18A 0201 should be determined to be the actual value of that parcel. The County Board determined that the taxable value of the parcel was \$792,141.²⁹ It is well established under

²⁶ In this case, both the exhibits and the witnesses referred to these groupings as land valuation groups (or LVGs) rather than LCGs. We understand the terms to be interchangeable, and will use the term LCG as that is the term used in the Department of Revenue's regulations.

²⁷ See 350 Neb. Admin. Code Ch. 14 § 004.08. In summary, the Department of Revenue's regulations require agricultural land to be broken into three general categories of use: irrigated cropland, dryland cropland, and grassland. Each of these categories of use is then further broken down into four LCGs based on soil type and the production capacity associated with the soil. In many cases the LCGs are then divided further to achieve even greater specificity as to the production capability of the soil. For example, Exhibit 12, page 3, shows that the Subject Property includes LCGs of 2A (soils that have the capability to produce moderately high to above average yields of crops), 3A (soils that have the capability to produce average or moderately low yields of crops) and 3A1 (soils with higher capability than 3A but lower capability than 2A).

²⁸ The breakdown of LCGs and values can be found in the property record files for each parcel of the Subject Property, at Exhibits 12 through 22.

²⁹ Ex. 10.

Nebraska law that sale price is not synonymous with actual value.³⁰ The statutory measure of actual value is not what an individual buyer may be willing to pay for the property, but, rather, its market value in the ordinary course of trade.³¹ Viewing the record as a whole, including the extensive data available regarding sales of similar parcels in the same market area, we are not persuaded by the Taxpayer's argument and find that there is not clear and convincing evidence that the sale price is the best indicator of the actual market value of this parcel.

The Taxpayer presented an analysis of land values in the county, but did not provide a precise explanation of how this analysis might be applied to the eleven parcels of the Subject Property. The Taxpayer appears to be asserting that we should determine the actual value of the property by applying a flat per acre value based only on the dominant use of the parcel as a whole, without regard to the capability of the different soil types on the parcel. We note that the Taxpayer's witness is not credentialed as an assessor or an appraiser, and the methodology proposed does not conform to the relevant professional standards. Nebraska law specifies that agricultural land and horticultural land is to be valued using the methodology that was applied by the County Assessor, which considers both the use and the capability of the land in determining the actual value.

The Taxpayer argued that some of the parcels included in the county's sales file were not comparable to the Subject Property. Among these were certain parcels which were sold while subject to continuing leases to a third party for production of seed corn, which the Taxpayer described as a "niche" crop. In appraisal literature, the (purportedly) increased value of the land due to the leases is known as "value in use."

Use value focuses on the value the real estate contributes to the enterprise of which it is a part, without regard to the property's highest and best use or the monetary amount that might be realized upon its sale. External conditions such as changes in the business or management of the property may cause use value to change. [...] A real property may have a use value as well as a market value. Use value is based on the current productivity of the property, regardless of any functional or external conditions that would limit its market value.³²

In this case, the use of farmland for seed corn is a management decision. As a result of management decisions agricultural land will have greater or lesser yields, a result that is not

³⁰ *Forney v. Box Butte Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³¹ *Cabela's, Inc., v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³² The Appraisal Institute, *The Appraisal of Rural Property* 29 (2nd ed. 2000).

directly related to the market value of the land. As noted above, real property in Nebraska is assessed for tax purposes based on its market value, not its value in use.

We also considered the Taxpayer's assertion that parcels lying within a two-mile radius of the city limits of Norfolk were not comparable to the Subject Property. It is certainly possible that proximity to urban development could affect the sales prices of these parcels, but the record does not contain any explanation or support for the two-mile radius selected by the Taxpayer as a fixed boundary. Mr. Hackerott testified that he evaluated sales to determine whether they appeared to be influenced by non-agricultural factors prior to inclusion in the sales file based on whether the sales prices fell within a range he considered normal for the market area.

Viewing the record as a whole, we find that the methodology used by the County Assessor in valuing the Subject Property conforms to Nebraska law. The value is also equalized because all acres of similar production capability (LCG) are valued at the same per acre rate throughout the market area. The Taxpayer has not produced clear and convincing evidence to reverse the decisions of the Board of Equalization.

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 determinations. 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.

VI. ORDER

IT IS ORDERED THAT:

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

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 for tax year 2018 is:

Case No.	Parcel ID	Taxable Value
18A 0188	590135082	\$878,430
18A 0189	590135104	\$745,776
18A 0192	590135392	\$79,737
18A 0193	590159763	\$352,878
18A 0194	590212915	\$69,350
18A 0195	590159089	\$764,820
18A 0196	590159577	\$203,630
18A 0197	590159585	\$1,176,435
18A 0200	590164643	\$1,263,066
18A 0201	590142798	\$792,141
18A 0202	590159844	\$793,436

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Madison County Treasurer and the Madison 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 July 12, 2019.³⁴

Signed and Sealed: July 12, 2019

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, 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.