

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Beef Packers, Inc.,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case Nos: 18A 0025, 18A 0026, 18A 0027

Decision and Order Affirming the Decisions
of the Sheridan County Board of
Equalization

For the Appellant:

Rudy Stanko,
President, Nebraska Beef Packers, Inc.

For the Appellee:

Jamian Simmons,
Deputy Sheridan County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property consists of three parcels of agricultural land and horticultural land in Sheridan County, Nebraska. The Subject Property in Case No. 18A 0025 is a 529.95 acre parcel. The Subject Property in Case No. 18A 0026 is a 71.29 acre parcel. The Subject Property in Case No. 18A 0027 is a 176.41 acre parcel. The legal description of the Subject Property is found at Exhibits 2, 3, and 4. The property record cards for the Subject Property are found at Exhibits 10, 14, and 18.

II. PROCEDURAL HISTORY

The Sheridan County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 18A 0025 was \$697,679 for tax year 2018.¹ Nebraska Beef Packers, Inc. (the Taxpayer) protested this assessment to the Sheridan County Board of Equalization (the County Board) and requested an assessed valuation of \$696,945.² The Sheridan

¹ Exhibit 2.

² *Id.*

County Board determined that the taxable value of the Subject Property for tax year 2018 was \$697,679.³

In Case No. 18A 026, the County Assessor determined that the assessed value of the Subject Property was \$35,927 for tax year 2018.⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$34,295.⁵ The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$35,927.⁶

The County Assessor determined that the assessed value of the Subject Property in Case No. 18A 027 was \$258,042 for tax year 2018.⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$257,493.⁸ The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$258,042.⁹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 11, 2019. During the hearing, the parties stipulated to the receipt of exchanged exhibits 5 to 32. Case No. 18R 0025 was also considered in the same hearing.¹⁰

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.¹¹ 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.¹²

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

³ *Id.*

⁴ Exhibit 3.

⁵ *Id.*

⁶ *Id.*

⁷ Exhibit 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ The Commission will enter a separate Order for Case No. 18R 0025.

¹¹ 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).

¹² *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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.¹³

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.¹⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁵

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁶ 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.¹⁷

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.¹⁸ The Commission may also 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.¹⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.²⁰

IV. APPLICABLE LAW

A. Valuation

Under Nebraska law, all real property shall be valued at its actual value, with three exceptions.²¹ Agricultural land and horticultural land shall be valued for taxation at seventy-five percent of its actual value.²² Agricultural land and horticultural land which meets the

¹³ *Id.*

¹⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁶ 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).

¹⁷ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁸ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-201 (Reissue 2018).

²² Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

qualifications for special valuation shall be valued for taxation at seventy-five percent of its special value.²³ Historically significant real property which meets the qualifications for historic rehabilitation valuation shall be valued as provided in Neb. Rev. Stat. §§ 77-1385 to 77-1394.²⁴

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.²⁵

Actual value means market value in the ordinary course of trade.²⁶ 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.²⁷ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²⁸ 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.²⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.³⁰

Agricultural land and horticultural land means a 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.³¹

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

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 the Nebraska Constitution.³³ Equalization is the process of ensuring that all taxable property is

²³ Neb. Rev. Stat. § 77-201(3) (Reissue 2018).

²⁴ Neb. Rev. Stat. § 77-201(4) (Reissue 2018).

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

²⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁸ *Omaha Country Club* at 180, 829.

²⁹ Neb. Rev. Stat. § 77-131 (Reissue 2018).

³⁰ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

³¹ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

³² Neb. Rev. Stat. § 77-132 (Reissue 2018).

³³ *Neb. Const.*, Art. VIII, § 1.

placed on the assessment rolls at a uniform percentage of its actual value.³⁴ 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.³⁵ 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.³⁶ 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.³⁷ 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.³⁸ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁹ 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.⁴⁰ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁴¹

V. SUMMARY OF THE EVIDENCE

The Taxpayer provided no exhibits prior the exchange of evidence deadline stated in the Order for Hearing.⁴² The Taxpayer also did not participate in a Pre-Hearing Conference, as ordered by the Commission.⁴³

Rudy Stanko testified on behalf of the Taxpayer. Mr. Stanko asserted at the hearing that his appeal was based solely upon his legal argument that the assessment of the Subject Property must be based upon “cost,” which Mr. Stanko defined as that price (i.e., his cost) which he paid

³⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

³⁶ See *Cabela's Inc.*

³⁷ *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁸ *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).

³⁹ *First Nat. Bank & Trust Co. v. Cty. of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴⁰ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴¹ *Id.* at 673, 94 N.W.2d at 50.

⁴² See Case File.

⁴³ See Order For Hearing in Case File.

for the Subject Property, regardless of when that purchase was made. Mr. Stanko testified that he bought a portion of the Subject Property for \$250,000 in 1974. Under his theory, the assessed value of that portion should remain at \$250,000 until another buyer purchases the property, at which point the assessed value will change to the new purchase price. Mr. Stanko acknowledged in his testimony that the value he requested was not the actual value of the Subject Property. He further testified that he expected to sell the Subject Property for three to four million dollars. To support his legal argument, Mr. Stanko requested that the Commission follow the requirements of Neb. Rev. Stat. §77-112. Before addressing this legal argument, it is noted that Nebraska law requires that agricultural land and horticultural land be valued at seventy-five percent of its actual value.⁴⁴

The statute Mr. Stanko relies upon states that actual value is to be determined using professionally accepted mass appraisal methods.⁴⁵ These methods include the sales comparison approach, the income approach, and the cost approach.⁴⁶

Using the cost approach, “a property is valued based on a comparison with the cost to build a new or substitute property. The cost estimate is adjusted for the depreciation evident in the existing property.”⁴⁷

Mr. Stanko’s argument rests upon equating the terms price and cost. However, “[c]ontemporary appraisers make careful distinctions among the related terms *price*, *cost*, and *value*. The term *price* refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.” (emphasis in original)... The term *cost* is used by appraisers in relation to production, not exchange. Cost may be either an accomplished fact or an estimate.”⁴⁸ The Nebraska Court of Appeals has stated:

It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.⁴⁹

⁴⁴ Neb. Rev. Stat. §77-1359(1) (Reissue 2018).

⁴⁵ Neb. Rev. Stat. §77-112 (Reissue 2018). This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001).

⁴⁶ *Id.*

⁴⁷ *The Appraisal of Real Estate*, 14th Edition, 561.

⁴⁸ *Id.* at 26.

⁴⁹ *Forney v. Box Butte Cty. Bd. of Equal.*, 7 Neb. App. 417, 424, 582 N.W.2d 631, 637 (1998).

Further, the cost approach, using professionally accepted mass appraisal methods, includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.”⁵⁰

Therefore, we disagree with the legal argument made by the Taxpayer. Neither Nebraska law nor professionally accepted mass appraisal methods authorize the use of an approach to valuing agricultural land and horticultural land based upon the most recent price paid for the Subject Property. Put in another way, the cost approach, as authorized by Neb. Rev. Stat. §77-112, does not rely upon the price paid for the property.⁵¹

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 decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer should be denied and the determinations of the County board should be affirmed.

⁵⁰ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

⁵¹ In the course of the hearing, the Taxpayer repeatedly requested that the Commission provide case law supporting the position that the term “cost approach” refers to the appraisal methodology described above rather than simply the last purchase price of the property. The Nebraska Supreme Court and the Nebraska Court of Appeals have discussed and approved assessments employing the cost approach in too many cases to conveniently list here; a sample includes: *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623 (1999), *Kawasaki Motors Corp. v. Lancaster Cty. Bd. of Equal.*, 7 Neb. App. 655, 584 N.W.2d 63 (1998), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008), *JHQ La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 284 Neb. 130, 825 N.W.2d 477(2013), *Forney v. Box Butte Cty. Bd. of Equal.*, 7 Neb. App. 417, 582 N.W.2d 631 (1998).

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sheridan County Board of Equalization determining the values of the Subject Property for tax year 2018 are affirmed.
2. The assessed value of the Subject Property for tax year 2018 are as follows:

18A 025	\$697,679
18A 026	\$35,927
18A 027	\$258,042
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sheridan County Treasurer and the Sheridan 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 23, 2019.⁵²

Signed and Sealed: October 23, 2019.

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁵² 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.

