

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steve A. Brunette,
Appellant,

v.

Knox County Board of Equalization,
Appellee.

Case Nos: 18A 0146, 18A 0147
& 18A 0148

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

For the Appellant:

Steve A. Brunette,
Pro Se

For the Appellee:

John Thomas,
Knox County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property in Case No 18A 0146 is an 80 acre agricultural or horticultural parcel located in Knox County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The Property Record File (PRF) for the Subject Property is found at Exhibit 5. The Subject Property in Case No 18A 0147 is a 160 acre agricultural or horticultural parcel located in Knox County, Nebraska. The legal description of the Subject Property is found at Exhibit 2. The PRF for the Subject Property is found at Exhibit 6. The Subject Property in Case No 18A 0148 is a 320 acre agricultural or horticultural parcel located in Knox County, Nebraska. The legal description of the Subject Property is found at Exhibit 3. The PRF for the Subject Property is found at Exhibit 7.

II. PROCEDURAL HISTORY

The Knox County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 18A 0146 was \$127,535 for tax year 2018. Steven Brunette (the Taxpayer) protested this assessment to the Knox County Board of Equalization (the County

Board) and requested an assessed valuation of \$63,767. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$127,535.¹

The County Assessor determined that the assessed value of the Subject Property in Case No. 18A 0147 was \$179,800 for tax year 2018. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$89,900. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$179,800.²

The County Assessor determined that the assessed value of the Subject Property in Case No. 18A 0148 was \$547,430 for tax year 2018. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$273,715. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$578,740.³

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 21, 2019. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged exhibits 1 through 14.

III. STANDARD OF REVIEW

The Commission's review of a determination of the County Board of Equalization is de novo.⁴ 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.⁵

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

¹ E1

² E2

³ E3

⁴ 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).

⁵ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁶

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

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰

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.¹¹ 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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

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

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁴

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.¹⁵ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.²⁰ 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.²¹

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²² 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.
- (b) Agricultural or horticultural purposes includes the following uses of land:
 - (i) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
 - (ii) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production; and
- (c) Whether a parcel or land is primarily used for agricultural and horticultural purposes shall be determined without regard to whether some or all of the parcel is platted and

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ *Omaha Country Club* at 180, 829.

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

²² Neb. Rev. Stat. § 77-132 (Reissue 2018).

subdivided into separate lots or developed with improvements consisting of streets, sidewalks, curbs, gutters, sewer lines, water lines, or utility lines.²³

B. Summary of the Evidence

The Taxpayer alleged that the value of the Subject Property should be based on the actual income generated by the Subject Property. The Taxpayer did not present income and expense information for the Subject Properties to allow for the determination of the income generated by the Subject Properties. Professionally accepted appraisal techniques say that,

“Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.”²⁴

The record before the Commission does not contain market information regarding typical income and expense figures for agricultural or horticultural properties in Knox County.

The Taxpayer alleged that portions of the Subject Property were misclassified and that, as a result, areas of wasteland were not accounted for and areas of sand were not properly classified as unproductive. The Taxpayer testified that he has not had a soil scientist inspect any acres of the Subject Properties. The Taxpayer presented his determination of waste acres outlined on a Google map for two of the parcels of the Subject Property. The Taxpayer’s maps indicate 50.63 acres that the Taxpayer considers waste on the parcel found in Case No 18A 0147²⁵ and 33.40 acres that the Taxpayer considers waste on the parcel found in Case No. 18A 0148.²⁶ The Taxpayer stated that he included treed acres as waste.²⁷ The PRF for the parcel found in Case No. 18A 0147 shows that the county has classified that 25.38 acres as waste and 18.6 acres of trees, which when added together represent 43.98 acres.²⁸ The PRF for the parcel found in Case No. 18A 0148 shows that the county has classified that 8.81 acres as waste, 6.92 acres of trees, and 5.58 acres classified as shelterbelt which when added together represent 21.31 acres.²⁹

²³ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

²⁴ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

²⁵ E13:8

²⁶ E14:13

²⁷ Comparing E13:8 and E14:13 to the Land use maps found in E9:7-8, it appears that the Taxpayer also included shelterbelt acres in his determination of waste.

²⁸ E6:3

²⁹ E6:3

The County Assessor testified that all of the agricultural and horticultural land acres in Knox County are classified into Land Valuation Groups (LVGs) as determined by the Property Tax Administrator using the soil surveys for the county.³⁰ The County Assessor testified that sandy soil types in Knox County are accounted for in the LVGs and that waste acres were determined by the slope of the soil type and classification as set forth in the soil survey. While some of the names of the soil types are too long for the space on the PRFs for the Subject Properties, there are over 200 acres of land on two of the three Subject Properties that have “sand” in the name of the soil type they are classified into.³¹ Additionally, 100% of the acres of the Subject Property in Case No. 18A 0146, 94% of the acres of the Subject Property in Case No. 18A 0147, and 34% of the acres of the Subject Property in Case No. 17A 0148 are classified in the lowest category of productivity, which are class 4 LVGs.³² The County Assessor has established three agricultural market areas for Knox County and the Subject Properties are located in Market Area 2. The County Assessor testified that when determining the per acre values of each LVG in Market Area 2 for the 2018 tax year she utilized only sales that occurred in Market Area 2 of Knox County and did not borrow any sales from any other county or market area.³³ The County Assessor testified that she has viewed the Subject Properties and that she did not see anything that would indicate to her that the LVG classifications of the Subject Properties were incorrect.

The Taxpayer presented the PRF for two parcels owned by Lamar Land and Cattle LLC (the Lamar Land Parcels).³⁴ The Taxpayer alleged that the Lamar Land Parcels, which are more productive than the Subject Properties, are assessed for less than the Subject Properties. The Lamar Land Parcels are located in Market Area 2 like the Subject Properties. The County Assessor testified that the acres on the Lamar Land Parcels were classified based on the same criteria as used to determine waste acres on the Subject Properties. The PRFs for the Lamar Land Parcels and the Subject Properties demonstrate that the acres on these properties are classified into LVGs using the same criteria, and each LVG has the same per acre valuations. For example, all land classified as 4G or 4G1 on the Subject Property was assessed at \$1,405 per acre,³⁵ and all

³⁰ See Neb. Rev. Stat. § 77-1363 (Reissue 2018), the Commission notes that Knox County refers to Land Capability Groups as Land Valuation Groups in the testimony and exhibits.

³¹ See E6:3, E7:3.

³² Wasteland and Shelterbelt are lower classifications but these acres do not produce and are only agricultural or horticultural acres due to their proximity to other agricultural or horticultural land. See, Neb. Rev. Stat. § 77-1359(1)(Reissue 2018)

³³ E12: 3-35.

³⁴ E13:14-15,19-20.

³⁵ E5:3, E6:3, E7:3.

land classified as 4G or 4G1 on the Lamar Land Parcels was assessed at \$1,405 per acre.³⁶ The differences in the overall valuations are attributable to differences in acre classifications due to soil types.

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 Knox County Board of Equalization determining the value of the Subject Property for tax year 2018 are affirmed.³⁷
2. The assessed values of the Subject Properties for tax year 2018 are:

Case No 18A 0146

<u>Land:</u>	\$127,535
Total:	\$127,535

Case No. 18A 0147

<u>Land:</u>	\$179,800
Total:	\$179,800

Case No. 18A 0148

Land:	\$547,330
<u>Buildings:</u>	\$ 31,410
Total:	\$200,505

³⁶ E13:15, 20.

³⁷ 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 Knox County Treasurer and the Knox 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 10, 2020.³⁸

Signed and Sealed: July 10, 2020

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁸ 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.