

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

Jeff A. Uhlir,  
Appellant,

v.

Knox County Board of Equalization,  
Appellee.

Case Nos: 18A 0162 & 18A 0163

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

**For the Appellant:**

Jeff A. Uhlir,  
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 0162 is a 240 acre agricultural or horticultural parcel located in Knox County, Nebraska.<sup>1</sup> The legal description of the Subject Property in Case No. 18A 0162 is found at Exhibit 1. The Property Record File (PRF) for the Subject Property is found at Exhibit 4. The Subject Property in Case No. 18A 0163 is a 160 acre agricultural or horticultural parcel located in Knox County, Nebraska. The legal description of the Subject Property in Case No. 18A 0163 is found at Exhibit 2. The PRF for the Subject Property is found at Exhibit 5.

**II. PROCEDURAL HISTORY**

The Knox County Assessor (County Assessor) determined that the assessed value of the Subject Property in Case No 18A 0162 was \$275,350 for tax year 2018. Jeff A. Uhlir (the Taxpayer) protested this assessment to the Knox County Board of Equalization (the County Board) and requested an assessed valuation of \$190,000. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$303,955.<sup>2</sup>

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<sup>1</sup> As discussed further in this order, the Taxpayer alleges that the Subject Property in Case No. 18A 0162 is not 240 acres.

<sup>2</sup> E1.

The County Assessor determined that the assessed value of the Subject Property in Case No. 18A 0163 was \$200,505 for tax year 2018. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$160,000. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$200,505.<sup>3</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 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 17.

### III. STANDARD OF REVIEW

The Commission's review of a determination of the County Board of Equalization is de novo.<sup>4</sup> 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.<sup>5</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>6</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>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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<sup>3</sup> E2.

<sup>4</sup> 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).

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

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>8</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>9</sup> 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.<sup>10</sup>

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

#### 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 full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>14</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>15</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>16</sup> Taxable value is

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<sup>9</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>10</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>16</sup> *Omaha Country Club* at 180, 829.

the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</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>19</sup>

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

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.<sup>22</sup> 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 subdivided into separate lots or developed with improvements consisting of streets, sidewalks, curbs, gutters, sewer lines, water lines, or utility lines.<sup>23</sup>

## **B. Summary of the Evidence**

The Taxpayer alleged that the tax paid on the Subject Properties has increased by too great an amount over the amount paid in prior years, and that the prior years' assessments were also too high. In the present appeals, the Commission has jurisdiction only over the current year's

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<sup>17</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>18</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>20</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>22</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

assessed value.<sup>24</sup> The Nebraska Supreme Court has held that assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>25</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>26</sup> Additionally, the Taxpayer did not file appeals of the assessed value for prior assessment years to allow the Commission to consider the assessed value of the Subject Properties in the prior assessment years. The Commission will only consider the 2018 assessed value in the present appeals.

The Taxpayer further alleged that portions of the Subject Property were misclassified in the following ways: areas of tree cover were not accounted for, areas of sand were not properly classified as sandy, and portions of the Subject Property that were grassland were classified as dryland cropland. The 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.<sup>27</sup> The Assessor further testified that sandy soil types in Knox County are accounted for in the LVGs. 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 120 acres of land on the two Subject Properties that have "sand" in the name of the soil type they are classified into.<sup>28</sup> The County Assessor has established three agricultural market areas for Knox County and the Subject Properties are located in Market Area 2.<sup>29</sup> The County Assessor testified that when determining the per acre assessed 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 sales from any other county or market area.<sup>30</sup> The record before the Commission demonstrates that every acre of agricultural or horticultural land in Market Area 2 has the same per acre values applied based on the LVG assigned to that acre. The Taxpayer did not offer any information to demonstrate that acres of the Subject Property that should be classified as grass/tree to account for tree cover were not classified as grass/tree acres by the County Assessor

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<sup>24</sup>See, *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted) (Jurisdiction is the inherent power or authority to decide a case). See, e.g., *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001). (The Commission only has that "authority" which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.)

<sup>25</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>26</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

<sup>27</sup> 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.

<sup>28</sup> See, E4:6, E5:4

<sup>29</sup> See, E7:2, E10:2.

<sup>30</sup> E10: 2-30.

or County Board. The PRFs for the Subject Properties show that no acres are classified as dryland cropland on either parcel. The agricultural or horticultural acres on the Subject Properties are classified as either grassland, grass/tree, road, shelterbelt, site, water, or waste.<sup>31</sup>

The Taxpayer's main argument was that he is assessed for acres of land that he does not own. He alleges that the Subject Property in Case No 18A 0162 is 217 acres in size rather than the 240 acres assessed in 2018. The Taxpayer did not allege that the assessed acre count of the Subject Property in Case No. 18A 0163 was incorrect. The County Board alleges that it is not unreasonable or arbitrary to assess the Subject Property found in Case No. 18A 0162 using the Deeded Acres based on the information presented to the County Board and before the Commission in these appeals.

The parties agree that the legal description of the Subject Property in Case No. 18A 0162 is: W2NW, SW4 in 11-32-8,<sup>32</sup> alternatively rendered as the West Half of the Northwest Quarter (W1/2NW1/4) and Southwest Quarter (SW1/4) of Section Eleven (11), Township Thirty-Two (32) North, all in Range Eight (8) West of the 6<sup>th</sup> P.M., Knox County, Nebraska.<sup>33</sup> This legal description describes a parcel of land consisting of one half of one quarter section and an entire quarter section of land. A parcel of land that is one half of a quarter section and a quarter section contains 240 acres.<sup>34</sup> The parties referred to this number of acres as the Deeded Acres for the Subject Property.

The Taxpayer stated that it was his understanding that he is being assessed for 23 acres of land that would be included in the Deeded Acres but is actually located on the neighbor's property. The Taxpayer and the County Assessor met prior to the 2017 assessment date to discuss the size of the property. The Taxpayer and the County Assessor agreed on the location of the northern, western, and southern borders of the Subject Property but did not agree on the eastern border(s). The County Board presented an aerial photograph of the Subject Property and surrounding properties, marked with dashed lines representing the western border of the Subject Property as set forth in the deed and the solid line representing where the Taxpayer said the western border of the Subject Property was as of the assessment date.<sup>35</sup>

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<sup>31</sup> E4:3 & E5:3.

<sup>32</sup> See E1.

<sup>33</sup> See E15:7.

<sup>34</sup> The Appraisal Institute, The Appraisal of Rural Property 83-91 (2d ed. 2000), see also 442 Neb. Admin. Code Ch. 5 § 031.02 (2011).

<sup>35</sup> E7:10.

The County Assessor uses a Geographic Information System (GIS) to determine the classification of the acres for each the parcels in Knox County (i.e., dryland cropland, grassland, road, etc.). The County Assessor testified that using the GIS with the solid line border suggested by the Taxpayer indicated that the parcel contained 217 acres of land. The Assessor testified that the GIS acre counts are not exact. The GIS system for Knox County contains a disclaimer that indicates that the map, all associated data, and measurement are approximate and not to be used for any official purpose.<sup>36</sup> The County Assessor testified that in June 2017 she adjusted the acres of land to 217 acres, due to the limited amount of time she had to look further into the acre count issue for that tax year. For tax year 2018, the County Board determined that the acre count “be taken back to the deeded acre count as all parcels are valued accordingly in Knox County,”<sup>37</sup> and adjusted the acres to 240 based on the legal description contained on the deed. The Taxpayer requested that the Commission determine that the Subject Property be assessed based on 217 acres of land.

The Taxpayer inherited the Subject Properties in 2016. The Taxpayer stated that while he had worked with his father farming the Subject Properties prior to 2016, he was unaware of who placed or maintained the fences on the Subject Property. The Taxpayer testified that he has not had the Subject Property surveyed to determine the acreage of the Subject Property. No prior survey of the Subject Property was presented to the Commission to demonstrate the acreage of the Subject Property. The Taxpayer testified that he has not engaged in any quiet title action against a neighbor, nor has any quiet title action been taken by a neighbor to determine the fence lines or boundaries of the Subject Property. The Taxpayer further testified that there are no written agreements either between the neighbors or in the register of deeds office to establish a boundary for the Subject Property different from the legal description. The Taxpayer has not requested that the neighbor move the fence located on the western side of the Subject Property, other than an agreement to move a fence an acre or an acre and a half to allow the neighbor to water their cows, which is not part of the “missing” 23 acres. It was alleged that the section which contains the Subject Property in Case No. 18A 0162 is not square or does not contain a full 640 acres;<sup>38</sup> however, there was not any evidence or testimony to demonstrate that the size of the section was other than a full section or where acres were missing from the section.

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<sup>36</sup> E17.

<sup>37</sup> E1.

<sup>38</sup> Section 11, Township 32, Range 8.

The Taxpayer has not shown that the “missing” 23 acres have been legally transferred to another owner or added to another property in Knox County. The Taxpayer has not presented a survey of the Subject Property in Case no 18A 0162 to show that its actual size is different than that listed on the deed. The Taxpayer has not presented a survey or any other information to show that the section in which the Subject Property in Case No. 18A 0162 is located is not a complete section. The Commission finds and determines that it was neither unreasonable or arbitrary for the County Board to rely on the Deeded Acres of the Subject Property in Case No. 18A 0162 when determining its assessed value for tax year 2018.

## 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.<sup>39</sup>
2. The assessed values of the Subject Properties for tax year 2018 are:

### Case No 18A 0162

<u>Land:</u>	<u>\$303,955</u>
Total:	\$303,955

### Case No. 18A 0163

<u>Land:</u>	<u>\$200,505</u>
Total:	\$200,505

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<sup>39</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 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.

Signed and Sealed: July 10, 2020

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner