

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

Andrew J. Dietzel,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18C 0318

Decision and Order Affirming the  
Determination of the Douglas County Board  
of Equalization

**For the Appellant:**

Andrew J. Dietzel,  
Pro Se

**For the Appellee:**

Jennifer D. Chrystal-Clark,  
Deputy Douglas County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a four acre parcel located in Douglas County. The parcel is improved with a 20,000 square foot Storage Warehouse and assessed as a commercial parcel. The legal description and property record card for the Subject Property are found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,242,000 for tax year 2018. Andrew J. Dietzel (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a lower assessed valuation. The Douglas County Board determined that the taxable value of the Subject Property for tax year 2018 was \$1,242,000.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on Tuesday, March 3, 2020, with Commissioner Steven Keetle presiding. Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of exchanged exhibits 1 and 2.

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<sup>1</sup> E1.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board is de novo.<sup>2</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>3</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>4</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>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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>7</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>8</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>9</sup> The Commission may also take notice of judicially cognizable facts, take notice of

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<sup>2</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>3</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</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>8</sup> *Bottoff v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

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>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</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>12</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>13</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>14</sup> 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.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>18</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

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<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> *Omaha Country Club* at 180, 829.

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.<sup>19</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>20</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>21</sup>

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

The Taxpayer argues that the Subject Property should be assessed as an agricultural parcel. The Taxpayer asserted that the Subject Property is not provided with services by the County as it has its own water (well), sewer, and gas and that he paid to have OPPD install electrical service to the Subject Property. The Taxpayer further alleges that the Subject Property is zoned for agricultural use and for these reasons should be valued as an agricultural parcel.

Under Nebraska assessment law it is the primary use of the parcel rather than its zoning that determines if land can be classified as agricultural or horticultural land.<sup>22</sup> Additionally, any land associated with a building or enclosed structure located on the parcel cannot be classified as agricultural or horticultural land.<sup>23</sup>

The Property Record File (PRF) for the Subject Property shows that there is a 20,000 square foot storage warehouse on the Subject Property.<sup>24</sup> The Subject Property is valued by the County

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<sup>19</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>20</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

<sup>22</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>24</sup> E2.

Assessor using the income approach to value, one of the professionally accepted mass appraisal methods allowed by statute, and a portion of that value is allocated to the land component.<sup>25</sup>

The record before the Commission does not demonstrate that any portion of the land is being 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. There is no evidence that any of the land on the Subject Property is retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act, or enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production. The Subject Property is not adjacent to and in common ownership or management with other agricultural land and horticultural land. The Subject Property does not meet any of the requirements for assessment as agricultural or horticultural land under Nebraska Law.

## 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 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 appeal of the Taxpayer is denied.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2018 is affirmed.<sup>26</sup>
2. The assessed value of the Subject Property for tax year 2018 is:

Land:	\$ 261,400
<u>Improvements:</u>	<u>\$ 980,600</u>
Total	\$1,242,000

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<sup>25</sup> See, E2:8, E2:3, Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>26</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 Douglas County Treasurer and the Douglas 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 9, 2021.<sup>27</sup>

Signed and Sealed: July 9, 2021

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>27</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.