

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Beef Packers, Inc.,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case No: 18R 0025

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

For the Appellant:

Rudy Stanko,
President,
Nebraska Beef, Inc.

For the Appellee:

Jamian J. Simmons,
Deputy Sheridan County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is an unimproved residential parcel located in Sheridan County. The legal description and property record card for the Subject Property are found at Exhibit 5.

II. PROCEDURAL HISTORY

The Sheridan County Assessor determined that the assessed value of the Subject Property was \$5,600 for tax year 2018. Nebraska Beef, Inc. (the Taxpayer) protested this assessment to the Sheridan County Board of Equalization (the County Board) and requested an assessed valuation of \$2,310. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$5,600.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 11, 2019, with Commissioner Robert W. Hotz presiding. Exhibits 1 through 32 were admitted in the course of the hearing.

¹ Exhibit 1.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.² When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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.⁹ The Commission may also take notice⁹ of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized

² 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).

³ *Brenner* at 283, 811 (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

⁷ 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).

⁸ *Bottof v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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

knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

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.¹²

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.¹³ Actual value, market value, and fair market value mean exactly the same thing.¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

B. Facts & Analysis

The hearing conducted on September 11, 2019, was a consolidated hearing for Commission Case Nos. 18A 0025, 18A 0026, 18A 0027, and 18R 0025. The Taxpayer's central contention at the hearing was that the assessed value of property should be equal to the price paid to purchase it, rather than its current market value. As set forth in greater detail in our order for Case Nos. 18A 0025 through 18A 0027, the Taxpayer's contention is contrary to Nebraska law, which

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

requires residential real property to be assessed at its actual value. The only evidence presented related to the Subject Property in 18R 0025 were the exhibits offered by the County Board. These exhibits show that the parcel was assessed at \$2,300 from 2008 until 2018, when the assessment increased to \$5,600. The record contains no further explanation of the reason for the assessed value.

As noted above, the County Board need not put on any evidence to support its valuation of the Subject Property unless the Taxpayer establishes that valuation was unreasonable or arbitrary. The Taxpayer has not presented any evidence to show that the County Board's valuation was unreasonable or arbitrary.

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 Sheridan County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is: \$5,600.
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, 2019.¹⁸

Signed and Sealed: October 23, 2019

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

¹⁸ 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.