

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

The Ranch at Sidney, LLC,
Appellant,

v.

Cheyenne County Board of Equalization,
Appellee.

Case No. 18R 0101

Decision and Order
Reversing the Determination of the
Cheyenne County Board of Equalization

For the Appellant:
Max Rodenburg,
Rembolt Ludtke LLP

For the Appellee:
Paul B. Schaub,
Cheyenne County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a unimproved 141.5 acre parcel located in Cheyenne County. The legal description and property record card for the Subject Property are found at Exhibit 3:26-32.

II. PROCEDURAL HISTORY

The Cheyenne County Assessor determined that the assessed value of the Subject Property was \$457,328 for tax year 2018.¹ The Ranch at Sidney, LLC (the Ranch) protested this assessment to the Cheyenne County Board of Equalization (the County Board) and requested an assessed valuation of \$93,700. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$457,328.²

The Ranch appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 12-13, 2019, with Commissioner Hotz presiding.³ Exhibits 1 through 5 were admitted without objection.

¹ Exhibit 1. Other documents in the record indicate that the value determined by the County Assessor and the County Board was \$457,081. See Ex. 3:29.

² Exhibit 1.

³ One hundred and three appeals involving the same or related parties were originally scheduled to be heard between November 12 and November 15, 2019. Ninety-nine of those appeals were settled or dismissed before the hearing. A common record explaining the hearing procedure and receiving exhibits for all four remaining appeals was developed on November 12. Testimony and argument for the Subject Property in this appeal, Case No. 18R 0101, was received on November 13.

III. STANDARD OF REVIEW

The Commission's review of the determination by a 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 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 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 County Board need not put on any evidence to support its valuation of the property at issue unless the Ranch establishes the County Board's valuation was unreasonable or arbitrary.⁹

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.¹⁰ The Commission may also take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the

⁴ 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* at 283, 811 (Citations omitted).

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

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

evidence presented to it.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

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.¹³

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.¹⁴ Actual value, market value, and fair market value mean exactly the same thing.¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

The Ranch is a subsidiary of Cabela's Inc., a sporting goods business that had an extensive footprint in the city of Sidney, Cheyenne County, Nebraska, prior to a buyout and merger with Bass Pro Shops in September 2017. To frame the issue of the valuation of the Subject Property, we find facts about underlying economic events in accordance with the Property Tax

Administrator's Reports & Opinions:

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Id.*

¹⁵ *Omaha Country Club* at 180, 829 (2002).

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Sidney was home to one of Nebraska's largest employers Cabela's, the World's Foremost Outfitter of hunting, fishing and outdoor gear. However, in September 2017, Cabela's was sold to competitor Bass Pro Shops. This has caused a total restructuring of the local operation due to Bass Pro Shops decision to initiate a buy-out for a large number of Cabela's management, coupled with the voluntary move of others. The office buildings that comprise the Cabela's campus are still awaiting final disposition from the new owner. Needless to say, a once local corporation that employed approximately 2,000 Cheyenne County residents (slightly more than 42% of total employment in Sidney) has through its sale caused economic uncertainty for the entire county.¹⁹

Cabela's (through the Ranch)²⁰ purchased the Subject Property in 2010 with the intention of creating a residential campus for its employees; the campus was to include housing, a lake, and other amenities. The property was never developed into this campus, except for a small parcel that was split off from the Subject Property and improved with four "spec houses." Only one of these houses was occupied at the time of this hearing.

A 48.6 acre portion of the 141.5 acre parcel is zoned for residential use, but the precise language of the ordinance and restrictions are not in the record.²¹ This portion of the parcel contains a commercial/industrial well designed to supply water to the undeveloped campus, but the well cannot be used for agricultural irrigation without modifications. There are no other utilities or sewer service on the Subject Property, and no portion of the Subject Property is platted for residential lots. The remainder of the parcel, 92.9 acres, was used for agricultural purposes before the purchase and has continued with that use. Of those agricultural acres, 26.4 were certified irrigated in 2015, but by January 1, 2018, those acres were no longer irrigated. These 92.9 acres contain a variety of soil types and land capability groups (LCGs) ranging from 1A/1G (higher yield) to 4A/4G (lower yield), and two ponds.²²

After purchasing Cabela's, Bass Pro Shops began liquidating Cabela's assets, including the real property in Sidney. The Subject Property was sold along with four other parcels to Faessler

¹⁹ 2018 Reports and Opinions of the Property Tax Administrator, Cheyenne County, page 8. The Commission may consider and utilize the Reports and Opinions during the course of any hearing or proceeding or as part of its decision making process. 442 Neb. Admin. Code, Ch. 5 § 031.02 (2011).

²⁰ The witnesses usually referred to the property owner as Cabela's rather than Cabela's subsidiary, the Ranch.

²¹ This portion of the parcel is described as 52 acres at various points in the testimony and the documentary evidence. Based on the record as a whole, we believe the actual size is approximately 48.6 acres.

²² Ex. 3:29, Ex. 89:106. See 350 Neb. Admin. Code, Ch. 14 § 004.08 *et seq.* for an explanation of land capability groupings in the assessment of agricultural land. Note that some acres on the Subject Property were classified as "A" (for irrigated land) when they should have been classified as "G" (for grassland), and the ponds are not listed.

Farms in October 2018 for \$450,000.²³ The five parcels sold totaled 404.076 acres,²⁴ which is an average of \$1,113.65 per acre. However, the five parcels were not uniform in terms of use and productivity. Parcel Number 170071499, for example, consists of 74.28 irrigated acres assessed between \$12,825 and \$12,860 per acre depending upon LCG: a total of \$468,679.²⁵ None of the witnesses at the hearing knew whether the five parcels sold to Faessler Farms were offered for sale on the open market or advertised prior to the sale.

Melody Keller, the Cheyenne County Assessor, testified at the hearing and explained the methodology used to assess the Subject Property for tax year 2018. Keller did not become assessor until January 2019, although she worked as a clerk in the County Assessor's Office at the time of the 2018 assessment. For 2018, the previous county assessor determined that 26.4 acres of the Subject Property were irrigated agricultural land of various LCGs, which was assessed at \$61,265.²⁶ Grassland consisted of 66.5 acres of various LCGs, and was assessed at \$30,906. The residential portion, which the previous assessor believed to be 52 acres, was assessed at \$7,017.50 per acre, totaling \$364,910. The size of the residential portion was later determined to be three to four acres smaller than 52 acres.²⁷ Keller testified that this portion was zoned for residential use and could not be farmed.

The County Assessor utilized three market areas for agricultural land in 2018: Market Area 1 (roughly the south half of the county), Market Area 3 (the north half), and Market Area 5 (roughly the Sidney city limits).²⁸ The Subject Property is within Sidney city limits and is located in Market Area 5. According to the 2018 Reports and Opinions of the Property Tax Administrator, "Market Area 5, surrounds the city of Sidney and contains no qualified agricultural sales, since land in this area is purchased for residential and commercial expansion (and this is likely to change, with the current uncertainty of both the residential and commercial markets)."²⁹ According to the 2018 Abstract of Assessment, all grassland and dryland in Market Area 5 is assessed at \$1,300 per acre regardless of LCG.³⁰ Keller testified that the grassland of the Subject Property was not equalized with other grassland in the market area at \$1,300 per

²³ See Ex. 5:1.

²⁴ See Ex. 5:9.

²⁵ Ex. 3:19-20.

²⁶ The breakdown of LCGs and per acre values for the 2018 assessment is found at Ex. 3:29.

²⁷ I.e., approximately 48.6 acres.

²⁸ See Ex. 3:36.

²⁹ 2018 Reports and Opinions of the Property Tax Administrator, Cheyenne County, 15.

³⁰ 2018 Reports and Opinions of the Property Tax Administrator, Cheyenne County, 49.

acre. The 2019 Reports and Opinions of the Property Tax Administrator clarifies that “Market Area 5 ... contains only 1,439 acres. Because of non-agricultural influence, this land was always valued at full market value based on [the] previous assessor’s determination of market value.”³¹

Keller believed that the 2018 assessment of the Subject Property was incorrect, and she proposed a value of \$469,260 (\$11,932 more than the value determined by the previous assessor and the County Board).³² This proposal was based on \$364,910 for 52 acres of residential land, \$103,350 for 79.5 acres of grassland at \$1,300 per acre, and \$1,000 for 10 acres of waste water pond at \$100 per acre. Keller offered evidence of comparable parcels of land to support these values, including an unimproved non-agricultural parcel assessed at \$284,377, or \$8,038 per acre, in 2018.³³ However, there was no evidence of the sales used to determine these assessed values.

Keller did not regard the October 2018 sale of the Subject Property to Faessler Farms as an arm’s length sale because multiple parcels were sold together, making it impossible to determine the per acre price for each parcel, and because Bass Pro Shops sold a number of Cabela’s properties for less than their assessed values. Keller conducted a telephone interview with the purchaser, who told her that Faessler Farms was unaware that it could not farm the portion of the Subject Property that was zoned for residential use.

C. Discussion and Analysis

The evidence in the record does not support the County Board’s determination in favor of the underlying assessment. There is no evidence that the parcel had any irrigated acres as of the assessment date. No portion of the Subject Property was used for residential purposes, and there is no evidence that the owner as of January 1, 2018, had any plans to develop it for such purposes. With the departure of Cabela’s, which represented 42% of total employment in Sidney, there appears to be little need for residential development on the scale once envisioned by the Ranch.

The parties disagreed as to whether the 2018 sale to Faessler Farms constituted an “arm’s length” sale. Under Nebraska law, “All sales shall be deemed to be arm’s length transactions

³¹ 2019 Reports and Opinions of the Property Tax Administrator, Cheyenne County, 16.

³² See Ex. 3:117.

³³ Ex. 3:107.

unless determined to be otherwise under professionally accepted mass appraisal techniques.”³⁴ However, the determination of whether a sale is arm’s length is made by the county assessor, and “The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.”³⁵ We note that this statute relates specifically to the inclusion of sales in the sales file developed and maintained by the Property Tax Administrator. There are a number of reasons that an arm’s length sale should not be used in the assessment/sales ratio study that determines whether assessments fall within the acceptable statutory range.³⁶

The relevant question for our inquiry is not whether the sale was suitable for inclusion in the state sales file, but whether the sale is indicative of the actual value of the land. The Ranch urges us to determine the value of the Subject Property by dividing the sale price by the number of acres sold to reach an approximate per acre price of \$1,125, and then multiplying that value by the number of acres of the Subject Property. Several principles from Nebraska case law are applicable to the issue.

A single sale may in some instances provide evidence of market value. We have recognized that in tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. A single sale should not be excluded merely because it is a single sale. Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.³⁷

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.³⁸

And from previous litigation between Cabela’s and the County Board:

³⁴ Neb. Rev. Stat. § 77-1327(2) (Reissue 2018).

³⁵ Id.

³⁶ See 350 Neb. Admin. Code, Ch. 12 § 004.03 et seq. See Neb. Rev. Stat. § 77-5023 for the acceptable range. It is possible that Keller’s use of “not arm’s length” was a shorthand description of a sale that should not be used in the sales file to determine the assessed-to-sale ratio.

³⁷ *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001).

³⁸ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.³⁹

We find that the October 2018 sale, standing alone, is not a reliable indicator of value for the Subject Property. The sale included five parcels of property with a variety of uses, and some of the acres sold are more valuable than others. For example, Parcel Number 170071499 consists of 74.28 acres of irrigated land and was assessed at \$468,679 for 2018. That land is more valuable on an acre-by-acre basis than the Subject Property, and so we infer that this parcel represented a higher proportion of the sale price than the Subject Property. Additionally, there is no evidence that the land was advertised for sale, and there is evidence that Bass Pro Shops was seeking to liquidate Cabela's property quickly. These facts do not prove that the sale was not at market value, but they weigh against basing the assessed value of the Subject Property entirely on the sale.

92.9 acres of the Subject Property were assessed as agricultural for 2018; 26.4 as irrigated and 66.5 as grassland. The evidence shows that none of these acres were irrigated as of the assessment date. Keller's analysis further indicates that 10 acres of this agricultural land is wastewater, which the county typically values at \$100 per acre. All grassland and dryland in Market Area 5 is assessed at \$1,300 per acre. Accordingly, we find that the 92.9 acres have an equalized value of \$108,700.⁴⁰

The 48.6 acres of the Subject Property intended to be developed for residential use were assessed as "site" at a total of \$364,910, which is \$7,508 per acre.⁴¹ After reviewing the record, we are unable to find any sales of comparable vacant land that support this value, although we acknowledge that an adjacent unimproved parcel was assessed at \$8,038 per acre. There is no evidence that the Subject Property was being developed for residential use or that there was demand for residential development in the area. The property does not have utilities or sewer, and it has not been platted into residential lots. If not for the zoning, these acres would be classified as grassland and valued at \$1,300 per acre. As the Property Tax Administrator noted, non-agricultural influences (such as the potential for residential development) are already reflected in the value of \$1,300 per acre placed upon grassland and dryland in Market Area 5.

³⁹ *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999).

⁴⁰ \$1,300 per grassland acre × (92.9 total acres – 10 waste acres) + \$100 per waste acre × 10 waste acres = \$108,770.

⁴¹ Or \$7,017.50 per acre if the total land area were in fact 52 acres.

The record does not support a conclusion that the difference in zoning increases the market value of these acres from \$1,300 to more than \$7,000. We find that these acres should be equalized with the acres that are classified as grassland at \$1,300 per acre. The total equalized value of the Subject Property for tax year 2018 should be \$171,950.⁴²

IV. CONCLUSION

The Commission finds that there is 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 clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the decision of the County Board is vacated and reversed.

V. ORDER

IT IS ORDERED THAT:

1. The decision of the Cheyenne County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is vacated and reversed.⁴³
2. The taxable value of the Subject Property for tax year 2018 is \$171,950.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer and the Cheyenne 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.

⁴² \$108,770 grassland and waste + (\$1,300 × 48.6 "residential" acres) = \$171,950.

⁴³ 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.

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 June 2, 2021.⁴⁴

Signed and Sealed: June 2, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴⁴ 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.