

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

Eric W. Limoges,  
Appellant,

v.

Howard County Board of Equalization,  
Appellee.

Case No: 19A 0080

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

**For the Appellant:**

Eric W. Limoges,  
Pro Se

**For the Appellee:**

Kathy Hirschman,  
County Commissioner for Howard County

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property in this appeal is a single-family dwelling on 35.2 acres located in rural Howard County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Howard County Assessor determined that the assessed value of the Subject Property was \$184,069 for tax year 2019. Eric W. Limoges protested this assessment to the Howard County Board of Equalization (the County Board) and requested an assessed valuation of \$133,582. The Howard County Board determined that the taxable value of the Subject Property for tax year 2019 was \$180,899.<sup>1</sup>

Eric Limoges appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). This appeal was designated for a single commissioner hearing and a single commissioner hearing was held on July 6, 2020. An order by a single commissioner was issued on August 14, 2020, affirming the decision of the County Board.

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<sup>1</sup> Exhibit 1. This value was recommended by the County Assessor at the time of the protest proceeding.

Limoges filed a timely request for rehearing on August 26, 2020. The Commission issued an Order for Hearing and Notice of Hearing dated December 3, 2020, setting the appeal for a de novo informal hearing on the merits before a panel of the Commission to be held on February 12, 2021. The hearing was then continued to March 1, 2021, but the deadlines for exchanging and submitting evidence were not extended. The hearing was held on March 1, 2021, with Commissioner Hotz presiding. Exhibits 1 through 4 were admitted. Exhibit 5 was not admitted because it was not exchanged as required by the Order for Hearing and Notice of Hearing issued December 3, 2020.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization 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>

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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).

A taxpayer must introduce competent evidence of actual value of a subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup> A 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.<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 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. APPLICABLE 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

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<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> *Bottorf 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).

<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).

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

## V. FINDINGS OF FACT

Eric Limoges testified on his own behalf and called Neal Dethlefs, the County Assessor, to testify. Limoges asserted that the increase in the assessment amount from the prior tax year was excessive.

Limoges purchased the Subject Property on May 17, 2018, for \$237,500.<sup>22</sup> He bought it for use as a full-time residence, and he has occupied the residence since the time of the purchase. The purchase price of \$237,500 included numerous items of personal property worth \$39,850.<sup>23</sup>

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<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).

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

<sup>20</sup> Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

<sup>22</sup> Exhibit 2:1.

<sup>23</sup> Exhibit 3:42-43.

The County Board did not dispute the assertion that personal property was included in the sales price.

Howard County has three market areas for agricultural land;<sup>24</sup> the Subject Property is located in Market Area 7200.<sup>25</sup> The 2019 Reports and Opinions of the Property Tax Administrator list the average per acre value of agricultural land and horticultural land in Howard County broken out by market area and by land capability group (LCG).<sup>26</sup> In Market Area 7200, the average acre value for 4G was \$1,175; the average acre value for 4G1 was \$1,200, and the average acre value for 1G was \$1,499.<sup>27</sup> These values reflect the agricultural discount given to agricultural land, by requiring an assessment of 75% of actual value.<sup>28</sup>

At the time Limoges purchased the Subject Property, cattle grazed the grass acres pursuant to a cash rent contract and the grassland on the Subject Property was assessed as agricultural land at 75% of actual value through tax year 2018. Limoges testified that no cattle grazed the Subject Property and the Subject Property had no other agricultural uses after December 2018. Limoges also testified that seven acres of the Subject Property consist of a shallow pond. Limoges does not stock the pond with fish, but fish enter the pond via the drainage water from the reservoir. Kayaks are sometimes used on the pond.

Dethlefs, the County Assessor, testified that as of January 1, 2019, the Subject Property was classified as recreational property. He testified that his model for assessing rural acreage property was to assess the first acre as “acreage home site” at \$18,000, and each of the next nine acres as “acreage site” at \$5,000 per acre. Additional acres are assessed at the values that would be assigned to agricultural land based on soil type, but at full market value instead of 75% of market value.<sup>29</sup> Dethlefs did not identify any sales that were relied upon in order to develop this model.

This model was used to assess the Subject Property: the first acre was assessed at \$18,000 as the acreage home site, the seven acres of pond and two additional acres were assessed at \$5,000

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<sup>24</sup> 2019 Reports & Opinions of the Property Tax Administrator, Howard County, page 30-31.

<sup>25</sup> Exhibit 2:3.

<sup>26</sup> 2019 Reports & Opinions of the Property Tax Administrator, Howard County, page 30. A Land Capability Group (LCG) is a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management. 350 Neb. Admin. Code Ch. 14 § 004.08E.

<sup>27</sup> *Id.*

<sup>28</sup> See Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

<sup>29</sup> See 350 Neb. Admin. Code Ch. 14 § 004.08 for the Department of Revenue’s regulations related to classification of agricultural land for assessment purposes.

per acre as acreage site acres, the road consisting of .47 acres was assessed at no value, and the remaining acres were assessed as if they were agricultural acres based upon soil types, which were grouped into LCGs as follows: 19.98 acres of 4G grassland, 4.58 acres of 4G1 grassland, and 0.17 acres of 1G grassland.<sup>30</sup> The assessed value for these acres was determined by taking the average acre value for the LCG and multiplying that value by 1.33333 to remove the 25% discount normally applied to agricultural land and horticultural land. Dethlefs testified that assessing these acres at residential values would result in an assessment higher than the parcel's actual market value.

## VI. ANALYSIS

As discussed above, the burden of proof in this appeal is not on the County Board or the County Assessor to defend the assessment, but rather, on Limoges to demonstrate by clear and convincing evidence that the assessment is arbitrary or unreasonable.

The record contains little evidence of the actual value of the Subject Property besides the sale of the Subject Property itself. Limoges purchased the Subject Property on May 17, 2018, for \$237,500. This purchase included \$39,850 in personal property, so the sale price for the Subject Property was \$197,650. Sale price is not synonymous with actual value or fair market value.<sup>31</sup> But where the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.<sup>32</sup> The Subject Property is assessed at \$180,899, which is less than the value indicated by the sale.

Limoges asserted that portions of the land component of the Subject Property should be assessed at 75% of market value, but that assertion is incorrect. Agricultural land and horticultural land in Nebraska is assessed at 75% of market value, but all other property is assessed at full market value.<sup>33</sup> In order to qualify as agricultural land and horticultural land, the land must be "primarily used for agricultural or horticultural purposes."<sup>34</sup> The Subject Property

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<sup>30</sup> Exhibit 2:3.

<sup>31</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>32</sup> *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982). The record contains various documents related to the purchase, all of which support a conclusion that the transaction was an arm's length sale.

<sup>33</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>34</sup> Neb. Rev. Stat. § 77-1359(1).

was used for grazing cattle before Limoges bought it, but Limoges stopped all agricultural use on the property by December 2018. Because the property was not being used for agricultural or horticultural purposes as of the assessment date, it does not qualify as agricultural land and horticultural land, so it must be assessed at full market value.

Limoges disagreed with the classification of the Subject Property as recreational land. Although we agree that the primary use of the parcel is residential, there is no evidence that Howard County has an assessment model for residential parcels as large as the Subject Property. The County Assessor identified the first acre of the Subject Property as an “acreage home site” and assessed it at \$18,000. The next nine acres were described as an “acreage site” and assessed at \$5,000 per acre. No evidence was adduced to show that these values were arbitrary or unreasonable. The County Assessor testified that assessing the remaining acres at residential values would result in an assessment higher than the parcel’s actual market value.

The remaining 24.73 acres were assessed by taking the average acre value, e.g., \$1,175 per acre for agricultural land classified as 4G, and multiplying that value by 1.33333 to remove the 25% discount to actual value normally applied to agricultural land and horticultural land. The record included no evidence of sales that were used to develop the model to determine the assessments for the first ten acres and no quantification of the value of the 24.73 acres based on residential or recreational sales was included in the evidence. Limoges also asserted that 18 acres of the Subject Property should have been assessed as wasteland because of the susceptibility of drainage flooding from the Farwell Reservoir. However, Limoges did not demonstrate that these acres met the formal definition of wasteland, which includes a requirement that “the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes.”<sup>35</sup>

Finally, Limoges asserted that the cabin on the Subject Property was overvalued when compared with other similar properties. He offered Exhibit 5 at the time of the hearing to further this assertion, but the exhibit was not timely filed and was not received in evidence. The record does not contain enough information about the properties Limoges believed were comparable to

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<sup>35</sup> 350 Neb. Admin. Code, Ch. 14 § 002.54.

the cabin for the Commission to determine whether they are truly comparable or whether they could be made comparable through adjustments.

## VII. 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 the reasons set forth above, the decision of the County Board should be affirmed.

## VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Howard County Board of Equalization determining the value of the Subject Property for tax year 2019 is affirmed.<sup>36</sup>
2. The assessed value of the Subject Property for tax year 2019 is:

Land	\$101,970
Improvements	\$ 78,929
Total	\$180,899

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Howard County Treasurer and the Howard 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 2019.

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<sup>36</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.



7. This Decision and Order is effective for purposes of appeal on June 2, 2021.<sup>37</sup>

Signed and Sealed: June 2, 2021

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Robert W. Hotz, Commissioner

SEAL

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Steven A. Keetle, Commissioner

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<sup>37</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.