

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Phillip Bartle,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No. 19A 0112

**DECISION AND ORDER AFFIRMING
THE DECISION OF THE KEITH
COUNTY BOARD OF EQUALIZATION**

Case Nos. 19A 0113 & 19A 0114

**DECISION AND ORDER REVERSING
THE DECISIONS OF THE KEITH
COUNTY BOARD OF EQUALIZATION**

For the Appellant:

Phillip Bartle,
Pro se

For the Appellee:

Randy Fair,
Keith County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property comprises three agricultural parcels located in Keith County, Nebraska. The legal descriptions and property record cards for the Subject Property are found at Exhibits 5:22-24 (Case No. 19A 0112), 4:50-53 (Case No. 19A 0113) and 4:22-25 (Case No. 19A 0114).

II. PROCEDURAL HISTORY

The Keith County Assessor determined that the assessed value of the Subject Property was \$208,480 in Case No. 19A 0112, \$609,825 in Case No. 19A 0113, and \$848,295 in Case No. 19A 0114 for tax year 2019.¹ Phillip Bartle (the Taxpayer) protested these assessments to the Keith County Board of Equalization (the County Board) and requested an assessed valuation of \$148,245 in Case No. 19A 0112, \$587,115 in Case No. 19A 0113, and \$836,370 in Case No. 19A 0114.² The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$159,225 in Case No. 19A 0112, \$609,825 in Case No. 19A 0113, and \$848,295 in Case No. 19A 0114.³

¹ Exhibits 1-3.

² *Id.*

³ *Id.*

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Commissioner Kuhn held a single commissioner hearing on July 15, 2020, and on January 5, 2021, he issued a decision and order affirming the decisions of the County Board. On February 1, 2021, the Taxpayer filed a request for rehearing before a panel of the Commission. The Commission held a hearing on April 7, 2021, with Commissioner Hotz presiding. Exhibits 1 through 9 were admitted without objection. Phillip Bartle, Judith Graser, and Renae Zink testified at the hearing.

III. STANDARD OF REVIEW

The Commission's review of the determination of the 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 of equalization 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

⁴ 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).

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

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the Board's valuation was unreasonable or arbitrary.¹⁰

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

IV. RELEVANT LAW

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.¹⁴

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.¹⁵ Nebraska courts have held that

⁹ 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).

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

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

actual value, market value, and fair market value mean exactly the same thing.¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹ Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.²⁰ 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.²¹

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²³ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²⁴ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain

¹⁶ *Omaha Country Club* at 180, 829.

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

²² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²⁴ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

legal duty, and not mere errors of judgment.²⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

V. FINDINGS OF FACT

Parcel number 263500301 is the Subject Property in Case No. 19A 0112. The parcel is improved with a hay shed and two utility buildings.²⁹ The buildings on this parcel of the Subject Property were originally assessed at \$76,550, but the County Board lowered the assessed value of the buildings to \$27,295 after the County Assessor recommended removing the value of a grain bin that was not on the parcel.³⁰ This value of \$27,295 is the same as listed for the hay shed in the Subject Property's Property Record File (PRF).³¹ The PRF indicates that the two utility buildings have 100% physical depreciation and no assessed value.³² The hay shed is listed in the PRF as built in 2000 with quality and condition ratings of 3.00; the replacement cost new is listed as \$33,695 and 19% physical depreciation was applied in the assessment.³³

Parcel number 257205501 is the Subject Property in Case No. 19A 0113. The parcel is improved with two grain bins assessed at \$37,325 each, a total of \$74,650.³⁴ The grain bins are listed in the PRF as built in 2008 with quality and condition ratings of 3.00 and aeration floors; the dimensions are listed at 36d × 30h and 11% depreciation was applied in the assessment.³⁵ The County Board determined that the taxable value of the buildings on the parcel was \$74,650.³⁶

Parcel number 269003900 is the Subject Property in Case No. 19A 0114. The parcel is improved with one grain bin assessed at \$37,895.³⁷ The grain bin is listed in the PRF as built in 2008 with quality and condition ratings of 3.00 and an aeration floor; the dimensions are listed at

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

²⁹ Exhibit 5:22-24.

³⁰ Exhibit 1.

³¹ Exhibit 1, Exhibit 5:22-24.

³² Exhibit 5:24.

³³ Exhibit 5:24.

³⁴ Exhibit 4:50-53.

³⁵ Exhibit 4:53.

³⁶ Exhibit 2.

³⁷ Exhibit 4:22-25.

36d × 31h and 11% depreciation was applied in the assessment.³⁸ The County Board determined that the taxable value of the buildings on the parcel was \$37,895.³⁹

Phillip Bartle, the Taxpayer, has extensive experience in concrete and construction, having worked on projects including Interstate 80, apartment buildings, several casinos, grocery stores, luxury boat storage units, and the Red Rocks amphitheater in Colorado. In 2008, he built six grain bins. The bins were built for cost; they are all the same size and were all built using the same materials. Three of these are the bins located on the Subject Property in Case Nos. 19A 0113 and 19A 0114.

Another of the six bins built by the Taxpayer was owned by Stephen and Karen Jehorek prior to a sale to Purcell Conservation Group (Purcell) in 2018; this bin was assessed at \$25,970 for each tax year 2013 through 2018 and \$36,020 for tax year 2019.⁴⁰ The grain bin on the Purcell property is listed in the PRF as built in 2008 with quality and condition ratings of 3.00; the dimensions are listed as 37d × 32h and 11% depreciation was applied in the assessment.⁴¹ This bin is listed with a concrete floor rather than an aeration floor because one of the Jehoreks told an employee of the County Assessor's Office that the floor was concrete.⁴²

The last two of the six bins built by the Taxpayer are owned by Six Diamonds Ranch (sometimes referred to as Archer or Archur in the Taxpayer's exhibits and testimony); these bins were each assessed at \$37,895 for tax year 2019.⁴³ The Six Diamonds grain bins are listed in the PRF as built in 2008 with quality and condition ratings of 3.00; the dimensions are listed at 36d × 31h and 11% depreciation was applied in the assessment.⁴⁴ These bins are listed with aeration floors.

In 2004, the Taxpayer built three hay sheds using recycled and repurposed materials for approximately \$15,000 each; in his opinion, the cost to build the same building would be no more than \$2,000 higher as of January 1, 2019. One of these hay sheds is the one on the Subject

³⁸ Exhibit 4:25.

³⁹ Exhibit 3.

⁴⁰ Exhibit 4:97-104, testimony of Bartle.

⁴¹ Exhibit 4:104.

⁴² Testimony of Zink.

⁴³ Exhibit 4:80.

⁴⁴ Exhibit 4:53.

Property in Case No. 19A 0112. Another of these hay sheds is owned by Six Diamonds and was assessed at \$27,965 for tax year 2019.⁴⁵ This hay shed is listed in the Property Record File (PRF) as built in 2002 with quality and condition ratings of 3.00; the replacement cost new is listed as \$33,695 and 17% physical depreciation was applied in the assessment.⁴⁶ The third hay shed was destroyed by fire prior to tax year 2019.

Rena Zink has been the Keith County Assessor since 2015. She has been a licensed appraiser since 2009 and holds the state Assessor's Certificate. She testified that the value of the land component of the Subject Property was determined by reviewing each sale of agricultural land during a three year sales period running from October 1, 2015, through September 30, 2018.⁴⁷ The value of the improvement component of Subject Property was determined using the cost approach to value based on Marshall & Swift costing tables. Agricultural buildings in Keith County were assessed using costing tables from 2012 prior to tax year 2019, when the costing tables were updated and the buildings were reassessed. Depreciation tables for use in the cost approach were derived from market data and applied consistently throughout the market area. Different depreciation tables were applied within city limits.

Zink testified that grain bins are assessed based on size, quality, condition, and features. Measurement of the bins in the field involves some rounding and estimation, which can lead to inaccuracies. Similarly, the County Assessor's Office depends on the reports of owners to know the floor type of grain bins, so the assessments may contain inaccuracies unless the owners inform the County Assessor of the correct information.

VI. ANALYSIS

The Taxpayer did not challenge the assessment of the land component of the Subject Property, only the assessment of certain improvements on each parcel. The evidence discussed during the hearing showed minor discrepancies between the values attributed to buildings on the Subject Property, the Purcell Property, and the Six Diamonds property.

⁴⁵ Exhibit 4:80.

⁴⁶ *Id.*

⁴⁷ This sales study methodology is consistent with relevant regulations. See 350 Neb. Admin. Code, Ch. 17 § 003.05C (2017).

Case No. 19A 0112

The Subject Property in Case No. 19A 0112 is improved with a hay shed assessed at \$27,295. This value was determined using the Marshall & Swift costing tables and depreciation was applied based on tables derived from sales within Keith County. The Taxpayer testified that he could build a similar shed for no more than \$17,000, but he did not provide any other evidence to support that assertion. A similar shed located on the Six Diamonds Ranch property was assessed at \$27,965. The difference in assessed value appears to be the result of different years built listed on the PRF, but the assessed value of the Six Diamonds shed is more than the assessed value of the Taxpayer's shed. The Taxpayer has failed to show that the County Board's determination on this parcel was incorrect, arbitrary or unreasonable.

Case Nos. 19A 0113 & 19A 0114

The Subject Property in Case Nos. 19A 0113 and 19A 0114 is improved with a total of three grain bins, two for 19A 0113 and one for 19A 0114. The Taxpayer testified that he built these three grain bins as well as two other grain bins located on the Six Diamonds parcel and one located on the Purcell parcel; all of the bins are the same size and were built the same year using the same materials. The grain bin on the Purcell property was assessed at \$36,020 for tax year 2019, but the grain bins on the Subject Property were assessed at \$37,325 each in Case No. 19A 0113 and \$37,895 in Case No. 19A 0114. The difference in the assessed values is the result of differences in the height and floor type of the bins as determined by employees of the County Assessor's Office. We were persuaded by the Taxpayer's testimony that the six bins are essentially identical.

Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.⁴⁸ Accordingly, the equalized value of each of the three bins on the Subject Property should be set at \$36,020; a total of \$72,040 for the two grain bins in Case No 19A 0113.

⁴⁸ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

VII. CONCLUSION

In Case No. 19A 0112, 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 in Case No. 19A 0112 should be affirmed.

In Case Nos. 19A 0113 and 19A 0114, 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 all the reasons set forth above, the determinations of the County Board in Case Nos. 19A 0113 and 19A 0114 should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. In Case No. 19A 0112, the decision of the Keith County Board of Equalization determining the value of the Subject Property for tax year 2019 is affirmed.
2. In Case Nos. 19A 0113 and 19A 0114, the decisions of the Keith County Board of Equalization determining the value of the Subject Property for tax year 2019 are vacated and reversed.
3. The taxable value of the Subject Property for tax year 2019 is:

19A 0112

Land	\$131,930
<u>Improvements</u>	<u>\$ 27,295</u>
Total	\$159,225

19A 0113

Land	\$535,175
<u>Improvements</u>	<u>\$ 72,040</u>
Total	\$607,215

19A 0114

Land	\$810,400
<u>Improvements</u>	<u>\$ 36,020</u>
Total	\$846,420

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2019.
8. This Decision and Order is effective for purposes of appeal on May 17, 2021.

Signed and Sealed: May 17, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner