

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

PETER W. KATT,
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 19R 0261,
20R 0382, & 21R 0886

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

For the Appellant:

Peter W. Katt,
Pro Se

For the Appellee:

Eric Synowicki,
Deputy Lancaster County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property was a 53.32-acre parcel being developed for residential use located in Lancaster County, Nebraska. The legal description and Property Record Files (PRFs) of the Subject Property are found at Exhibits 7, 8, and 9.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (County Assessor) determined the assessed value of the Subject Property was \$2,135,800¹ for tax year

¹ Exhibit 4:10.

2019, and \$2,132,400² for tax years 2020 and 2021. Peter W. Katt (the Taxpayer) protested these assessments to the Lancaster County Board of Equalization (the County Board). The County Board determined the taxable value of the Subject Property for tax year 2019 was \$2,135,800,³ and \$2,132,400 for tax years 2020 and 2021.⁴

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on March 7, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-hearing Conference Report, as ordered by the Commission. Exhibits 1 through 22 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁵ 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.⁶

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

² Exhibit 5:2 and Exhibit 6:2.

³ Exhibit 1.

⁴ Exhibits 2, 3.

⁵ 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).

⁶ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹¹

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.¹² The Commission may 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 evidence presented to it.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

⁷ *Id.*

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

⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT 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.¹⁵

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.¹⁶ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska

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

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁷ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁹ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Constitution.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 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 legal duty, and not mere errors of judgment.²⁶ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁷

V. FINDINGS OF FACT

A. Testimony of Peter Katt

The Taxpayer, Peter Katt, offered his own testimony. Katt stated his disagreement with the assessment centers around the value attributed to the undevelopable acres within the Subject Property. Katt stated the Subject Property was platted for development, and that 43.62 acres were developable out of the 53.32 total acres of the Subject

²¹ Neb. Const., art. VIII, § 1.

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

²⁷ *Id.* at 673, 94 N.W.2d at 50.

Property. Katt testified the undevelopable acres consisted of a pond. All of the acres of the Subject Property, both the developable acres and the undevelopable acres, were assessed at \$40,000 per acre.

Katt asserted a property across the road²⁸ from the Subject Property was an example of a comparable property with developable and undevelopable portions akin to the Subject Property, but it was assessed at \$29,581 per acre. He further stated similar undeveloped properties were separately assessed by the County Assessor with developable acres valued at \$40,000 per acre and undevelopable acres valued at \$0.²⁹ Katt argued any value created by the undevelopable acres is captured in the value of the adjacent developable acres, and the assessment of the undevelopable acres on the Subject Property at \$40,000 per acre creates an unequal tax burden on the Subject Property.

Katt conceded the Subject Property was a single parcel for tax years 2019, 2020, and 2021, but at the time of the hearing there was an approved plat to subdivide the Subject Property into separate taxable parcels beginning with tax year 2022.

B. Testimony of Derrick Niederklein

The County Board called Derrick Niederklein to testify. Niederklein was the Chief Field Deputy for the Lancaster County Assessor and had been employed in that capacity since 2019.

Niederklein testified the Subject Property was not subdivided into developable and undevelopable acres, but instead the entirety of the 53.32 acres was assessed as a single parcel for tax years 2019, 2020, and 2021.³⁰ The Subject Property was assessed at \$40,000 per acre for all three years. However, in tax year 2019, he stated a higher assessed value was calculated due to a difference between the number of acres

²⁸ Exhibit 18.

²⁹ Exhibits 19-22.

³⁰ Exhibits 7:2, 8:2, 9:2.

as listed in the County's GIS system versus the acres as listed on the deed.³¹

Niederklein testified that in assessing the Subject Property, the County Assessor sought to assess each parcel to reflect the market value of the *parcel as a whole*, and not on the basis of a particular parcel's component acres. In discussing the Subject Property, he asserted the undevelopable acres, which consisted of a pond, while not being developable, provided value to the adjacent developable acres.

Niederklein asserted that as more lots are platted into individual parcels, eventually the undevelopable pond acres would become isolated as a separate parcel and that no additional developable acres would be part of the pond parcel. At that time, when the pond parcel contained only undevelopable acres, it would have a \$0 value assigned to it.

Niederklein explained the County Assessor's valuation process for valuing developable parcels, stating that each parcel for the tax years at issue, was assessed in its entirety at \$40,000 per acre. He noted during the development cycle, preliminary plats may change depending on the intended use of future parcels. When the larger parcel is subdivided into smaller, individual parcels for use as residential lots, those lots are valued at their market value, and the value of undevelopable portions such as ponds and greenspace, which bring increased value to adjoining lots, would be included in the assessed values of those adjoining developed lots.

Niederklein stated that a portion of that increased value was already reflected in the sale price of individual developed residential lot parcels adjacent to the northern boundary of the Subject Property.³² He further asserted that these sales show a premium of approximately \$15,000 to \$20,000 per residential lot due to the influence of the pond. Niederklein testified that approximately 25 individual lots would be subject to this premium, and that at a \$15,000 premium for each lot,

³¹ Exhibit 7:2.

³² Exhibit 12:2.

the increased value would total approximately \$375,000. If that value were divided by the 9.62 acres which constituted the undevelopable pond, the value attributable to each pond acre would be approximately \$39,000 per acre.

Niederklein also prepared a map showing sales of similarly situated development land within the relevant time period. The parcel sizes were from 10 acres to 136 acres and were used to test the assessment of development land in the county.³³ Of the parcels listed, only one parcel had a sale price below \$40,000 per acre.

Niederklein also prepared a map of three development parcels selected at random from the assessment rolls.³⁴ He testified the parcels were selected on the basis that they would likely contain undevelopable greenspace akin to the pond on the Subject Property. Each of the parcels shown on Exhibit 14 were assessed at \$40,000 per acre.

Regarding the comparable properties provided by Katt, Niederklein testified a \$0 valuation was assessed for the properties in Exhibits 19 and 20 because those parcels had no developable acres and were carved from larger parcels and any assessed value which was previously attributed to those parcels, was reflected in increased valuation of nearby parcels.

In discussing the parcel listed in Exhibit 18, which had a per-acre value of \$29,581 for tax year 2021, Niederklein stated the parcel was previously two separate parcels which were combined into one parcel. The value listed on Exhibit 18 does not represent the value assessed for 2021 because that parcel didn't exist as of the assessment date. Rather, Niederklein testified that what is shown on Exhibit 18 represents the value that was allocated because of an administrative override due to the combination, rather than applying the development valuation model used to assess the Subject Property. In 2022, the combined parcel was valued as a whole using the development

³³ Exhibit 11:2.

³⁴ Exhibit 14:2.

valuation model assessing both developable and potentially undevelopable portions at \$40,000 per acre.

VI. ANALYSIS

A. Comparability and Equalization of Exhibits 19-22

As noted above, Katt did not dispute the assessment of developable acres at \$40,000 per acre. Katt's assertion was the undevelopable acres on the Subject Property should be valued at \$0.

In support of these assertions, Katt provided four contiguous parcels which he purported to be comparable to the Subject Property.³⁵ Two of these parcels were undevelopable, having no developable acres on the entire parcel, and had an assessed value of \$0.³⁶ Two parcels were developable and were assessed at \$40,000 per acre. None of the four parcels contained a mixture of developable and undevelopable acres like the Subject Property. The record indicates that only parcels that had no developable acres had a \$0 value. Any parcel with developable acres had a per acre assessed value of \$40,000 applied, no matter how many potential undevelopable acres or outlot acres they contained.

Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.³⁷ The Subject Property had a mixture of developable and undevelopable acres, and the properties in Exhibits 19-22 do not. Therefore, the Commission finds the properties in Exhibits 19-22 were not comparable to the Subject Property.

B. Scope of Assessment

To the extent Katt argued Exhibits 19-22 are demonstrative of values for developable/undevelopable acres on the Subject Property, this appears to be a question of the scope of assessment. Nebraska

³⁵ Exhibits 19-22.

³⁶ Exhibits 19, 20.

³⁷ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

Revised Statutes § 77-132 define a parcel as “a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³⁸ This statute provides two methods of combining several lots into a single parcel – if several lots in the same block, subdivision, and tax district are owned by a single owner, those lots may be included in one parcel.³⁹ Alternatively, if a single owner owns two or more vacant or unimproved lots in the same tax district and are owned and held out for sale by a single owner, that owner may elect to have the lots treated as a single parcel upon application to the County Assessor.⁴⁰

As Neb. Rev. Stat. § 77-132(2) demonstrates, a County Assessor may assess several lots in the same block, subdivision, and tax district as a single parcel. As Katt conceded in his testimony, the Subject Property was not platted into separate lots until tax year 2022. However, even if the Subject Property had been subdivided during the tax years at issue, the County Assessor could have elected to assess the Subject Property as a single parcel.

Nebraska law requires an assessor to prepare an assessment roll each year.⁴¹ The assessment roll lists each parcel and its owner, the number and value of acres or lots, and any improvements and their respective values.⁴² The Nebraska Supreme Court has held, “[i]n the evaluation of real property for tax purposes..., the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser.”⁴³ While no buildings or improvements are present on the Subject Property for the tax years at issue, the determination of value based upon development potential of each acre of a property would be a similar problem of allocation, rather than total value.

³⁸ Neb. Rev. Stat. § 77-132(1) (2020). The regulations of the Nebraska Department of Revenue mirror this definition.³⁸ 350 Neb. Admin. Code, ch. 10, § 002.12

³⁹ Neb. Rev. Stat. § 77-132(2) (2020).

⁴⁰ Neb. Rev. Stat. § 77-132(3) (2020).

⁴¹ Neb. Rev. Stat. § 77-1303(1) (Reissue 2018).

⁴² Neb. Rev. Stat. § 77-1303(2) (Reissue 2018).

⁴³ *Bumgarner v County of Valley*, 208 Neb. 361, 367, 303 N.W.2d 307, 310 (1981).

As Nebraska law and Niederklein’s testimony demonstrate, the proper scope for assessment is the total value of each individual parcel of real property. In this case, it is not contested that the Subject Property consists of a single parcel measuring 53.32 acres, of which 9.62 acres is an undevelopable pond. Therefore, the question before the Commission is whether the decisions setting the total value of the Subject Property was arbitrary or unreasonable.

C. Comparability of Exhibit 18

When looking to the assessment of each individual parcel as a whole, the incomparability of Exhibits 19-22 becomes more clear – the undevelopable acres constitute the entirety of the parcel in Exhibits 19 and 20. Exhibit 18 is a parcel which contains developable land but may also contain undevelopable land as well. As Niederklein testified, a lower per-acre value was assigned to Exhibit 18 for tax year 2021 as a result of an administrative override due to combining two parcels into one after the 2021 assessment date. Niederklein stated the same model used to value the Subject Property for tax years 2019, 2020, and 2021, was used to assess the property in Exhibit 18 in tax year 2022. While an assessment of another property for a tax year not at issue is generally not relevant, in this case, the Assessor’s valuation of Exhibit 18 based upon an administrative override due to combination of two parcels into a single parcel leads the Commission to find that the property in Exhibit 18 would not be comparable to the Subject Property for tax year 2021.

Ultimately, the Commission finds the Taxpayer has not met the burden of demonstrating, by clear and convincing evidence, that the County Assessor’s methodology of valuing the Subject Property as a single parcel, assessed at \$40,000 per acre, was arbitrary or unreasonable, or not equalized with similarly situated properties.

VII. CONCLUSIONS OF LAW

The Commission finds 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 determinations. The Commission also finds there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2019, 2020, and 2021 are affirmed.
2. The assessed value of the Subject Property for tax year 2019 is:
\$2,135,800
3. The assessed value of the Subject Property for both tax years 2020 and 2021 is:
\$2,132,400
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 years 2019, 2020, and 2021.

8. This Decision and Order is effective for purposes of appeal on August 28, 2023.⁴⁴

Signed and Sealed: August 28, 2023

SEAL



Robert W. Hotz, Commissioner

Steven A. Keetle, 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.