

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

US CHICORY INC.  
APPELLANT,

V.

SCOTTS BLUFF COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NOS: 20C 0001 & 20C  
0002

DECISION AND ORDER  
AFFIRMING THE DECISIONS  
OF THE SCOTTS BLUFF  
COUNTY BOARD OF  
EQUALIZATION

**For the Appellant:**  
Clarence D. Hergert,  
President, US Chicory Inc.

**For the Appellee:**  
Kirk Fellhoelter,  
Deputy Scotts Bluff County  
Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property in Case No. 20C 0001 is a 35.57-acre commercial parcel improved with light industrial and other commercial improvements used for processing chicory located in Scotts Bluff County, Nebraska (the Chicory Plant). The legal description and Property Record File (PRF) of the Subject Property in Case No. 20C 0001 is found at Exhibit 16 pages 50-68.

The Subject Property in Case No. 20C 0002 is an unimproved 5.54-acre commercial parcel located in Scotts Bluff County, Nebraska (the Unimproved Parcel). The legal description and PRF of the Subject Property in Case No. 20C 0002 is found at Exhibit 17 pages 34-49.

## II. PROCEDURAL HISTORY

The Scotts Bluff County Assessor (Assessor) determined that the assessed value of the Subject Property in Case No. 20C 0001 was \$1,245,516 for tax year 2020. US Chicory Inc.<sup>1</sup> (the Taxpayer) protested this assessment to the Scotts Bluff County Board of Equalization (the County Board) and requested a taxable value of \$1,038,105. The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$1,138,105.<sup>2</sup>

The Assessor determined that the assessed value of the Subject Property in Case No. 20C 0002 was \$154,533 for tax year 2020. Clarence David Hergert (Taxpayer) protested this assessment to the County Board and requested a taxable value of \$500. The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$41,024.<sup>3</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 27, 2020. Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. Exhibits 1-17 were admitted into evidence. Exhibit 18 was not admitted into evidence. Exhibit 19, a 120-page exhibit, was offered and received by the Commission at the hearing on July 27, however the Taxpayer later filed a motion to withdraw Exhibit 19. After a hearing on the withdrawal motion the Commission issued an Order Modifying Receipt of Exhibit removing all but the 15-page Restricted Appraisal Report from the record and receiving only those 15 pages as Exhibit 19.

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<sup>1</sup> Clarence D. Hergert is the President of US Chicory, Inc.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>4</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>5</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>6</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>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject

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<sup>4</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>5</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>8</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

Property is overvalued.<sup>9</sup> 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.<sup>10</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>11</sup> 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.<sup>12</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

#### 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

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<sup>9</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>10</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the real property and an identification of the property rights valued.<sup>14</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>15</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>16</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>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</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>19</sup>

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 Constitution.<sup>20</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>21</sup> 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.<sup>22</sup> 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

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<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>16</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>17</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>18</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>20</sup> Neb. Const., art. VIII, § 1.

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>22</sup> *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).

uniformity.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>26</sup>

## V. FINDINGS OF FACT AND ANALYSIS

### A. Summary of the Evidence

The Taxpayer testified that an appeal of the value of the Chicory Plant parcel was filed for tax year 2017 and that the Taxpayer and County Board agreed to a confession of judgement for that tax year. The Commission issued a Decision and Order setting the value of the Chicory Plant parcel based on the value agreed upon by the Taxpayer and County Board in their confession of Judgment for tax year 2017.<sup>27</sup>

The Taxpayer testified that he had purchased the Unimproved Parcel in the mid 1980's and it had never been assessed or had an assessed value until tax year 2020. The 2020 Notice of Valuation Change presented by the Taxpayer shows that the Unimproved Parcel did have assessed value for the previous tax year.<sup>28</sup> The PRF for the Unimproved Parcel does not have a valuation history prior to tax year 2020.<sup>29</sup> The Taxpayer offered a Restricted Appraisal Report for the

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<sup>23</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>24</sup> *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).

<sup>25</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

<sup>26</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>27</sup> *US Chicory, Inc. v. Scotts Bluff Cty Bd. of Equal*, Case No 17C 0028, a copy of the Commission's Decision and Order has been received as E8.

<sup>28</sup> E9

<sup>29</sup> E17:34

Unimproved Parcel that purports to comply with the Uniform Standards of Appraisal Practice for a Restricted Appraisal Report. The Restricted Appraisal Report for the Unimproved Parcel found a negative value for the parcel as a developable industrial parcel.<sup>30</sup> The Taxpayer testified that the Unimproved Parcel had been used for dumping of various materials, both with and without his permission, over the years prior to the assessment date. The Taxpayer testified that he had reached an agreement with a third party to use the Unimproved Parcel for dumping materials that would later be leveled out by that third party to make it a buildable lot, that third party had gone bankrupt before the project could be completed, leaving various materials dumped on the parcel. A letter from an engineering firm indicated that these materials had no value and would need to be removed and the site graded before the Unimproved Parcel could be developed.<sup>31</sup> The Taxpayer testified that he would not combine the Unimproved Parcel with the Chicory Parcel because he did not know if the Unimproved Parcel had been contaminated by what had been dumped on the Unimproved Parcel over the years.

The PRF for the Chicory Parcel shows that the Assessor used the cost approach to determine the assessed value of the parcel, one of the three professionally accepted mass appraisal methods set forth in the statutes.<sup>32</sup> The PRF for the Unimproved Parcel shows that the Assessor applied a per acre value to determine the assessed value of the parcel.<sup>33</sup> The County Board reduced the assessed value of the Unimproved Parcel at the protest hearing based on the value the Unimproved Parcel would have if it were combined with the Unimproved Parcel, which it was not.<sup>34</sup> The County Board requested

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<sup>30</sup> E19

<sup>31</sup> E15:8

<sup>32</sup> E16:50-77

<sup>33</sup> E17:34-49

<sup>34</sup> E17:52

and was given very limited income and expense information regarding both the Chicory Parcel and the Unimproved Parcel.<sup>35</sup>

## **B. Analysis**

The Taxpayer alleges that the value of the Chicory Parcel should be rolled back to the value agreed upon in the 2017 valuation appeal, noting that value was set by order of the Commission. The Courts have held that a decree fixing the value of property under a prior assessment is not admissible to prove value under a subsequent assessment, and a prior year's assessment is not relevant to a subsequent year's valuation.<sup>36</sup> The Courts have further held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>37</sup> The Taxpayer offered no other evidence of actual value for the Chicory Parcel for tax year 2020. A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.<sup>38</sup>

A presumption exists that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its actions.<sup>39</sup> The presumption disappears when competent evidence to the contrary is presented.<sup>40</sup> When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is

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<sup>35</sup> E16:15 and E17:17

<sup>36</sup> *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

<sup>37</sup> *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>38</sup> *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W. 2d 515 (1981).

<sup>39</sup> See Neb. Rev. Stat. § 77-5016(9); *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013); *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283-284, 276 N.W.2d 802, 811 (2008) note 7 (citing *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

<sup>40</sup> *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013), note 34.



considered competent evidence under Nebraska law.<sup>41</sup> The Restricted Appraisal Report for the Unimproved Parcel proports to comply with the Uniform Standards of Appraisal Practice for a Restricted Appraisal Report.<sup>42</sup> The Taxpayer has therefore overcome the presumption in favor of the determination of the County Board regarding the Unimproved Parcel.

Once the presumption is rebutted, whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence, with the burden of proof resting on the taxpayer.<sup>43</sup> The Restricted Appraisal Report determines a value of the Unimproved Parcel based on comparable sales and then reduces that value by the cost to remove dirt and debris, arriving at a negative value. The income and expense information for the Unimproved Parcel shows that it did generate income in one of the last three years for “sugar dirt,” and incurred no expenses other than real property tax and insurance which together were less than the income for that year.<sup>44</sup> The record before the Commission shows that the Subject Property has a value even if the dirt and debris are not removed to make it a developable industrial site. This value would not be the full “Unimpaired Value” as determined by the sales comparison approach found in the Restricted Appraisal Report or the initial valuation determined by the Assessor, but it would be more than zero. The assessed value determination of the County Board is less than the Unimproved Parcels value as a developable lot but more than zero. The Taxpayer has failed to demonstrate that the determination of the County Board regarding the Unimproved Parcel was unreasonable or arbitrary.

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<sup>41</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

<sup>42</sup> E19

<sup>43</sup> See *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>44</sup> E17:17

## VI. CONCLUSION

For the Chicory Parcel 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 the Unimproved Parcel 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 however 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 determinations of the County Board are affirmed.

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Scotts Bluff County Board of Equalization determining the value of the Subject Property for tax year 2020 are affirmed.
2. The assessed value of the Subject Property for tax year 2020 is:

**Case No. 20C 0001: \$1,138,105**

**Case No. 20C 0002: \$ 41,024**

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 2020.
7. This Decision and Order is effective for purposes of appeal on January 23, 2023.<sup>45</sup>

Signed and Sealed: January 23, 2023

SEAL



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Steven A. Keetle, Commissioner

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James D. Kuhn, Commissioner

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<sup>45</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.