

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

AMERICAN GELBVIEH
ASSOCIATION
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NO: 20E 0105

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

For the Appellant:

Megan Slater,
Executive Director

For the Appellee:

Daniel J. Zieg
Chief Deputy Lancaster County
Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property includes computers, office equipment, and office furniture used in the Appellant's daily operation of business. The Appellant, American Gelbvieh Association (AGA), is a not-for-profit, 503(c) organization not affiliated with any governmental entity. Its mission is to record and promote the Gelbvieh cattle breed.

II. PROCEDURAL HISTORY

The Lancaster County Assessor determined that the Taxpayer's personal property was not exempt from taxation for tax year 2020. American Gelbvieh Association (the Taxpayer) protested this determination to the Lancaster County Board of Equalization (the

County Board). The County Board determined that the Taxpayer's personal property was not tax exempt for tax year 2020.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on February 6, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-5 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.² 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.³

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.⁴

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order,

¹ Exhibit 1.

² 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).

³ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁴ *Id.*

decision, determination, or action was unreasonable or arbitrary.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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.⁹ 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.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

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,

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

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

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.¹²

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.¹³ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

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.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

¹⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰ 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.²¹ 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.²² 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.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

A. Exemption Law

The commission is required to “hear and determine appeals of decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees.”²⁵ An exemption from taxation is never presumed. The burden of showing entitlement to a tax exemption is on the applicant. Statutory tax exemption provisions are to be strictly construed, and their operation will not be extended by judicial construction. An exemption from taxation must be clearly authorized by the relevant statutory provision.²⁶ Exempt property includes:

²⁰ *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).

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

²⁵ Neb. Rev. Stat. § 77-5007(2) (Reissue 2018).

²⁶ *Ash Grove Cement Co. v. Nebraska Dep't of Rev.*, 306 Neb. 947, 955, 947 N.W.2d 731, 738 (2020).

Property owned by educational, religious, charitable, or cemetery organizations or any organization created for the exclusive benefit of any such [qualified organization], and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than 20 hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin.²⁷

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Executive Director of AGA, Megan Slater, testified that AGA requested the exemption as an agricultural or horticultural society. Slater states that AGA is registered as a 501(c)(5) not-for-profit agricultural organization and is exempt from federal taxation.²⁸ AGA was first incorporated in the state of Oklahoma in 1971.²⁹ AGA is a beef and cattle association formed to record, register, provide performance predictions, provide marketing activities, and build an industry presence for the Gelbvieh cattle breed, including holding an annual meeting. Slater testified that AGA does not engage in any sort of lobbying or political activities. Slater also stated that AGA is not affiliated or connected with any governmental or county agricultural associations, nor does it provide any formal training or educational programs outside of its annual meeting.

Slater stated that AGA does not own any real property in Nebraska, but instead leases its office space. Slater did not know

²⁷ Neb. Rev. Stat. § 77-202(1)(d) (Supp. 2020).

²⁸ Exhibit 2.

²⁹ Exhibit 3.

whether the lease agreement required AGA to pay the property taxes on its leased Nebraska real property.

B. Analysis

AGA, as noted above, is not a governmental entity. Therefore, the exemption provisions of Neb. Rev. Stat. § 77-202(1)(a) do not apply. AGA is also not an educational, religious, charitable, or cemetery organization. Thus, the provisions of Neb. Rev. Stat. § 77-202(1)(d) do not apply. However, Neb. Rev. Stat. § 77-202(1)(c) provides exemptions for “[p]roperty owned by and used exclusively for agricultural and horticultural societies.”

The term “agricultural and horticultural societies” is not defined in statute. Nebraska Department of Revenue regulations define this term as:

An agricultural and horticultural society is a nonprofit organization promoting agricultural interests and includes, but is not necessarily limited to: the Nebraska State Board of Agriculture established by Chapter 2, article 1; county agricultural societies organized pursuant to Chapter 2, article 2; agricultural associations organized pursuant to Chapter 2, article 20; and agricultural organizations pursuant to Chapter 2, article 28.³⁰

As AGA is neither the State Board of Agriculture or a county agricultural society, our analysis focuses on whether AGA meets the requirements to be considered as an agricultural association or an agricultural organization.

i. Agricultural Associations

Agricultural associations are governed by Neb. Rev. Stat. §§ 2-2001, *et seq.* These statutes require an agricultural association to file with the Nebraska Secretary of State a copy of its constitution and bylaws,³¹ and must annually file a statement with a list of its members, names and addresses of its officers, and an itemization of its receipts and

³⁰ 350 Neb. Admin. Code, Chapter 40, § 004.03 (Rev. 7/3/2013).

³¹ Neb. Rev. Stat. § 2-2001 (Reissue 2012)

disbursements.³² Failure to provide this annual statement results in the association ceasing to exist.³³

ii. Agricultural Organizations

Likewise, agricultural organizations, governed under Neb. Rev. Stat. §§ 2-2802, *et. seq.*, require the organization to file with the Nebraska Secretary of State “a constitution and bylaws or articles of incorporation which are consistent with the purposes of section 2-2801 to 2-2812.”³⁴

iii. AGA’s Filings

In this appeal, AGA filed no corporate documents at the time of its protest to the County Board. However, at the hearing before the Commission, AGA offered Exhibit 3, which included articles of incorporation and certificates of incorporation filed in the state of Oklahoma.

AGA did not present any evidence at the hearing that the filings required for consideration as an agricultural association or agricultural organization were filed with the Nebraska Secretary of State as required by statute. Accordingly, we find that AGA does not meet the definition of an agricultural association or an agricultural organization. Because AGA does not meet those definitions, we further conclude that AGA does not meet the requirements to be considered an ‘agricultural and horticultural society’ as defined in the Nebraska Department of Revenue regulations.

Because it does not meet the requirement to be considered an agricultural and horticultural society, and because it does not meet any other statutory requirements for property exemption, the Commission finds that the County Board’s denial of AGA’s personal

³² Neb. Rev. Stat. § 2-2002 (Reissue 2012).

³³ Neb. Rev. Stat. § 2-2003 (Reissue 2012).

³⁴ Neb. Rev. Stat. § 2-2802 (Reissue 2012).

property exemption for tax year 2020 was not arbitrary or unreasonable.

VI. 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 the reasons set forth above, the determination of the County Board is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization denying the exemption of the Subject Property for tax year 2020 is affirmed.
2. 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).
3. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2020.

6. This Decision and Order is effective for purposes of appeal on February 14, 2023.³⁵

Signed and Sealed: February 14, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³⁵ 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.