

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Roger W. Schmidt
Appellant,

v.

Hall County Board of Equalization
Appellee

Case No: 10A-069

Decision Affirming the Hall County
Board of Equalization

For the Appellant:
Roger W. Schmidt,

For the Appellee:
Jack Zitterkopf
Deputy Hall County Attorney

Heard before Commissioners Hotz and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a parcel of agricultural or horticultural land located in Hall County, Nebraska. The parcel contains 40 acres. (E2:4) The legal description of the parcel is found at Exhibit 2 page 4.

II. PROCEDURAL HISTORY

The Hall County Assessor determined that the assessed value of the subject property was \$26,520 for tax year 2010. Roger W. Schmidt (Taxpayer) protested this assessment to the Hall County Board of Equalization (County Board) and requested an assessed valuation of \$6,896. The County Board determined that the assessed value for tax year 2010 was \$26,520. (E1)

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a hearing on June 11, 2011.

III. STANDARD OF REVIEW

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.”
Brenner v. Banner Cty. Bd. Of Equal., 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008)
(citations omitted).

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.

Id. 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value). The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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.

Neb. Rev. Stat. §77-112 (Reissue 2009). "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 section 77-1371, (2) income approach, and (3) cost approach."

Neb. Rev. Stat. §77-112 (Reissue 2009). The Courts have held that "[a]ctual value, market value, and fair market value mean exactly the same thing." *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

Agricultural land and horticultural land means a parcel of land 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. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.

Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). A parcel of land means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.

See, Neb. Rev. Stat. §77-132(Reissue 2009).

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. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.

Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

B. Summary of the Evidence

The Taxpayer testified that the 40 acre parcel consisted of grassland, which he had farmed for prairie hay for multiple years. He believed the parcel had been valued based upon a market approach and asserted that it should instead have been assessed using an income approach. He asserted that the property taxes amounted to 58.37% of the average annual income generated by the sale of the hay. E2:1. He provided an income statement, and testified that the income amounts listed were one-half of the total income.¹ Other than the actual income amounts received and property tax payments paid, the Taxpayer did not provide any other data necessary to determine the actual value of the parcel using the income approach.

The Taxpayer also noted that the assessment had increased by more than \$7,000 from tax year 2009 to 2010. E2:3, 2:5. The assessment in a prior year is not relevant to actual value in the current tax year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944).

The parcel was assessed based upon land use. E2:6. One acre was deemed to be a roadway with no assessed value. Thirty-nine acres were classified as grassland with an LVG code of 4G, and assessed at \$680 per acre per a 2010 Agricultural Land Value Schedule for Market Area 1.² E2:6, E3:9, E3:10. The assessed value was \$26,520 (39 * \$680 = \$26,520). E3:9. There was no evidence that any other 4G grassland was valued at less than \$680 per acre.

V. CONCLUSION

The Commission finds that the Taxpayer has not provided 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 the Taxpayer has not provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

¹ The Taxpayer testified that under an agreement he received one-half of the income produced.

² Per this Schedule, 4G is among the lowest valued grassland.

VI. ORDER

IT IS ORDERED THAT:

1. The Decision of the Hall County Board of Equalization determining the value of the subject property for tax year 2010, is Affirmed.³
2. That the Assessed value of the Subject property for tax year 2010 is:

<u>Land:</u>	<u>\$26,520</u>
Total:	\$26,520
3. This decision and order, if no appeal is timely filed, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.
7. This order is effective for purposes of appeal on October 19, 2011.

Signed and Sealed: October 19, 2011

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2010 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.

³ Assessed value, as determined by the county board of equalization, 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.