BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steven C. Groeteke, Appellant, v. Sherman County Board of Equalization, Appellee	Case No: 10A-142 Decision Affirming the Determination of the Sherman County Board of Equalization

For the Appellant:
Steven C. Groeteke.

For the Appellee:
Mark Eurek,
Sherman County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The subject property is an improved 170 acre parcel located in Sherman County, Nebraska. The legal description and the property record card for the subject property is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Sherman County Assessor determined that the assessed value of the subject property was $310,365 for tax year 2010. Steven C. Groeteke ("Taxpayer") protested this assessment to the Sherman County Board of Equalization (the County Board) and requested an assessed valuation of $269,919. The County Board determined that the assessed value for tax year 2010 was $307,760. (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, as ordered by the Commission. The Commission held a hearing on November 18, 2011.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo. See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). 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).

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." Neb. Rev. Stat. §77-5016(8) (2011 Supp.). The commission may also "take notice of judicially cognizable facts and in addition 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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). "Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section." 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 and Findings

The Taxpayer condensed his appeal to one issue at the hearing before the Commission, alleging that the one acre farm home site valued at $7,500 by the County should be reclassified as a farm site at a value of $1,000. Exhibit 10, which is a copy of the Taxpayer's valuation protest letter to the County Board dated June 25, 2010, states as follows in support of this reclassification:

> The … issue we wish to address involves the minimum maintenance access to our "home site." When we made the improvements we were told we had to pay $5,000 to improve the roads before our building permit would be approved. We had to provide a waiver of ever requesting improved roads in order to have our building permit approved. Now our "home site" is being valued at $7,500 per acre which we assume is the value for home sites with a maintained access road. We feel our home site should be reclassed as a farm site and have a per acre value of $1,000. Thus, we believe an adjustment of $6,500 ($7,500 - $1,000) to the home site value is only equitable unless the County wishes to provide maintained access to our improvements at the County's expense not ours.

The 2010 property record card for the subject property discloses that the County Assessor assessed the one acre farm home site in the amount of $7,500 and two farm site acres in the amount of $1,000 per acre. (E5:2). For purposes of analyzing the assessment and taxation of "site" acres in the agricultural context for the 2010 tax year at issue, the Nebraska Statutes provide that "agricultural land and horticultural land means a parcel of land, **excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel.**" Neb. Rev. Stat. §77-1359 (1) (Reissue 2009) [Emphasis added]. Accordingly, because the Taxpayer's three "site" acres are not agricultural and horticultural land under Section 77-1359(1), they are assessed at 100% of actual value (as

opposed to 75% of actual value in the case of agricultural or horticultural land). Neb. Rev. Stat. 77-201 (Reissue 2009).

In addition to Section 1359(1) of the Nebraska Statutes referenced above, Sections 1359(3) and 1359(4) also govern the treatment of "site" acres. These subparts of Section 1359 provide as follows:

> (3) Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road; and
>
> (4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

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

The Taxpayer testified that the subject property's one acre home site includes improvements such as utility connections, water and sewer systems within the meaning of Section 1359(3). In addition, based on photos of the subject property set forth at Exhibit 6 and testimony by the Taxpayer, the Commission finds that the residence is "inhabitable" under Section 1359(3).

The Taxpayer testified, however, that his one acre home site does not include "improved access to a public road" for purposes of Section 1359(3). Consequently, he asserts that the one acre home site should be lowered from the County's $7,500 first acre valuation under Section 1359(3) to the $1,000 valuation imposed under the "**unimproved farm home site**" clause of Section 1359(4).

The Commission notes that the term "improved access to a public road" is not defined by statute, case law or regulation. Thus, in order to construe the "improved access to a public road" language of Section 1359(3), the Commission relies upon the following authority in this case of first impression:

1. No court decisions have been issued construing this portion of these statutes, nor have any rules and regulations been adopted governing implementation of the described

procedures. Under these circumstances, the Commission has an affirmative obligation to apply the statute in accordance with its own understanding of it. See, e. g., *State v. Moore*, 250 Neb. 805, 819, 553 N.W.2d 120, 132 (1996).

2. "Components of a series or collection of provisions pertaining to the same subject matter which are in pari materia may be conjunctively considered so that different provisions are consistent, harmonious, and sensible. Where possible, effect should be given to all provisions of a statute or regulation." *Elsome v. Elsome*, 257 Neb. 889, 900, 601 N.W.2d 537, 545 (1999) (Citations omitted).
3. "A statute is not to be read as if open to construction as a matter of course. If the language of a statute is clear, the words of such statute are the end of any judicial inquiry regarding its meaning. In the absence of ambiguity, courts must give effect to statutes as they are written." *Alisha C. v. Jeremy C.*, 283 Neb 340, 8 (2012) (Citations Omitted).

The Commission received Exhibit 20, which the Taxpayer offered in support of his testimony that the subject property does not include "improved access to a public road" for purposes of Section 1359(3). Exhibit 20 includes five photos that the Taxpayer testified depict the access road between his residence and the County Road. These photos indicate that the road is in a minimally improved state, and one depicts County signage adjacent to the road that states "Minimum Maintenance Road." (E20:1).

The Commission finds that the road depicted in Exhibit 20 is "a public road" for purposes of Section 1359(3). The "Minimum Maintenance Road" signage indicates that the County in fact provides at least some maintenance on the road, and one of the photos in Exhibit 15 is evidence that the County plows the road after snow accumulation.

The Commission also finds that the words "improved access" in the "improved access to public road" clause of Section 1359(3) pertains to the Taxpayer's driveway located on the subject property and leading to the "Minimum Maintenance Road" depicted in Exhibit 20. Therefore, for the reason the Taxpayer did not produce evidence to show that his driveway is not improved for purposes of 1359(3), the Commission is not persuaded that his argument has merit.

The Commission also received Exhibit 18 that the Taxpayer offered in support of his position. Exhibit 18 is an Agreement between the Taxpayer and the County dated November 10, 2003, which states as follows in pertinent part:

WHEREAS, the County has adopted zoning regulations requiring all roads leading to a residence to be improved all-weather roads, and

WHEREAS, the County roads leading to the real property owned by Groetekes is designated minimum maintenance;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties stipulate and agree as follows:

1. Irrespective of the nature of any structure placed upon the real property by Groetekes, Groetekes, on behalf of themselves, their heirs, their devisees, personal representatives, successors and assigns, hereby agree that County shall not be responsible for any costs for the improvement of the road from a minimum maintenance to an improved all-weather road.

2. Groetekes, or any subsequent owner of the real property, whether by building a residence, needing mail or bus service, which requires the road to be an improved all-weather road, then and in such event the County shall not be obligated for the costs of the improvement to the roadway but rather, such owner shall bear the costs relative to the improvement.

3. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their heirs, the devisees, personal representatives, successors and assigns.

4. In the event that subsequent to the execution of this Agreement, the Sherman County, Nebraska Road/Zoning Regulations are amended, modified or vacated as to a landowner's responsibility for costs to improve minimum maintenance roads to improved all-weather roads leading to a landowner's residence, then in such event this Agreement shall be null and void for all purposes.

The evidentiary record in this case does not include zoning regulations, so it is unclear whether they require the County or the Taxpayer to bear the whole cost or a share of the cost in connection with improving access roads under the above-referenced Agreement. The Commission does note, however, that inclusion of the section 4 "null and void" clause in the Agreement is a sign that the zoning regulations impose the cost burden on the landowner. Consequently, the Commission finds that the Agreement simply memorializes the cost burden contained in Sherman County zoning regulations. It follows, and the Commission therefore finds, that the Agreement constitutes a benefit to the Taxpayer in that it effectively grants him a waiver of the County zoning regulation requiring an "improved all-weather road" to lead to his residence.

The Commission notes that the Agreement between the Taxpayer and County referenced above uses the term “improved all-weather roads” to describe the type of road that must be financed by the Taxpayer. The Taxpayer testified that this language supports his argument that the road depicted by the five photos in Exhibit 20 is not improved for purposes of Section 1359(3).

The Commission is not persuaded by this argument. Therefore, the Commission finds that the Exhibit 18 Agreement between the Taxpayer and the County is not relevant for the purpose of construing Section 1359(3).

Finally, the Taxpayer cited Title 350 Neb. Admin. Code, ch. 10, § 001.05A (3/09) in support of his argument that the County’s $7,500 first acre valuation under Section 1359(3) of the Nebraska Statutes referenced above should not apply. Section 001.05A provides as follows:

> Single family residential shall mean all parcels of real property predominantly used or intended to be used as a dwelling place or abode whether occupied by the owner, tenant or lessee, and where occupancy is for a period of time usually year-a-round as opposed to transitory occupancy by a single family or two families.

The Taxpayer testified that his occupancy of the residence on the subject property is limited and is therefore transitory in nature. Thus, alleging that his dwelling is not a “single family residential” unit within the meaning of Section 001.05A of the Regulations, the Taxpayer testified that it is also not a farm “home site” for purposes of Section 1359(3) of the Nebraska Statutes.

The Commission finds that Section 001.05A is not applicable for purposes of construing the farm “home site” statutory framework contained in Section 1359(3) of the Nebraska Statutes. Rather, Title 350 Neb. Admin. Code, ch. 10, § 001.02 (3/09) defines a farm "home site" as "land within a parcel, which is used or intended to be used for residential purposes.” Moreover, Title 350 Neb. Admin. Code, ch. 10, § 001.02A (3/09) further defines farm “home site,” essentially paraphrasing the language of Section 1359(3). Therefore, the Commission concludes that Sections 001.02 and 001.02A, not Section 001.05A as asserted by the Taxpayer, govern the interpretation of farm “home site” under Section 1359(3) of the Nebraska Statutes.

The Commission further notes that Title 350 Neb. Admin. Code, ch. 10, § 001.05 (3/09), which immediately precedes the Regulation relied upon by Taxpayer to support his appeal, is the opening clause of regulatory framework that defines "predominant use" of a parcel for

assessment purposes. The Commission finds that this "predominant use" regulatory framework is present to provide guidance in determining whether property falls in the category of residential, commercial or agricultural/horticultural for assessment purposes. See, Title 350 Neb. Admin. Code, ch. 10, § 001.05. In other words, the purpose of Section 001.05A of the Regulations is not to define farm "home site" under Section 1359(3) of the Statutes as asserted by the Taxpayer.

For the reasons noted above, the Commission finds that the Taxpayer's argument under Title 350 Neb. Admin. Code, ch. 10, § 001.05A is without merit.

V. CONCLUSION

The Commission finds that the Taxpayer did not adduce 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 further finds that the Taxpayer has not adduced clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is Affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Sherman County Board of Equalization determining the value of the subject property for tax year 2010 is affirmed[1].
2. The assessed value of the subject property for tax year 2010 is: $307,760.
3. This decision and order, if no appeal is timely filed, shall be certified to the Sherman County Treasurer and the Sherman County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

[1] Assessed value, as determined by the County Board, 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.

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 August 15, 2012.

Signed and Sealed: August 15, 2012.

_____

Thomas D. Freimuth, Commissioner

SEAL

_____

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.