

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harry J. Coble
Appellant,

v.

Keith County Board of Equalization
Appellee

Case Nos: 10A 036, 10A 037,
10A 038, & 10A 039

Decision Reversing
the Keith County
Board of Equalization

For the Appellant:

Harry J. Coble,
Appellant, Pro Se

For the Appellee:

Randy Fair
Keith County Attorney

Heard before Commissioners Hotz and Salmon

I. THE SUBJECT PROPERTY

The subject property is comprised of four parcels totaling 1,936.16 acres of agricultural land¹ located in Market Area 1² of Keith County, Nebraska.

II. PROCEDURAL HISTORY

The Keith County Assessor determined that the assessed values of the subject property were \$44,480 (Case No. 10A 036), \$179,820 (Case No. 10A 037), \$178,325 (Case No. 10A 038), and \$132,220 (Case No. 10A 039) for tax year 2010. Exhibit 14. Harry J. Coble (the Taxpayer) protested these assessments to the Keith County Board of Equalization (the County Board). The County Board determined that the assessed values for tax year 2010 were \$44,480 (Case No. 10A 036), E1:1, \$179,820 (Case No. 10A 037), E2:1, \$178,325 (Case No. 10A 038), E3:1, and \$132,220 (Case No. 10A 039). E4:1.

¹ Exhibit 14

² For purposes of property tax assessments for tax year 2010, Keith County was divided into three market areas. Market Area 1 generally consisted of all land north of the North Platte River and Lake McConaughy. See map at *2010 Reports & Opinions of the Property Tax Administrator, Keith County*, Exhibit 51A, page 1, April, 2010.

The Taxpayer appealed the decisions of the County Board to the Commission. Prior to the hearing, the parties exchanged 13 exhibits. The Tax Equalization & Review Commission (Commission) held a consolidated hearing for all four parcels.

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).

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). 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). Having “agricultural or horticultural purposes” is defined as being “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.” Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

B. Summary of the Evidence

Harry Coble, the Taxpayer, testified that he purchased the subject property in 2006, and had rented the grassland to neighboring ranchers for grazing livestock since that time. He described the property as having a diminished value because of limited access for getting cattle in and out, but he offered no evidence to quantify this lesser value.

Wayne Hansmeier testified on behalf of the Taxpayer. Hansmeier, a neighboring rancher, described several properties in Market Area 1 of Keith County that the Property Tax Administrator had relied upon when setting values,³ and he gave opinions regarding the comparability of these properties to the subject property.

For the 2010 tax year, and until July 1, 2011, the Property Tax Administrator performed the county assessment function for all real property in Keith County for purposes of determining taxable value.⁴ An appraiser for the Property Tax Administrator prepared a “Mass Appraisal Report & Analysis” (Report) summarizing the valuation of agricultural land and horticultural land in Keith County for tax year 2010. E5. The Report identified three agricultural neighborhoods (Market Areas) within Keith County. E5:29-31. It also specifically identified

³ Pursuant to Neb. Rev. Stat. Sec. 77-1340 (Reissue 2009).

⁴ Beginning July 1, 2011, the Keith County Assessor resumed those duties.

nine agricultural land sales in Market Area 1 in the applicable three year period, and analyzed these sales based upon Land Valuation Groupings (LVG). E5:31, E5:58-60.⁵ In determining taxable value for the subject property, the Appraiser utilized these nine grassland sales in Market Area 1 for purposes of determining the actual value of the subject property. The nine sales utilized by the Appraiser were identified as Sales #2, 6, 7, 8, 12, 14, 15, 16, and 17, in Exhibit 5, pages 58-60. The sales, when arrayed by lowest to highest, by price paid per acre, were as follows:

Sale #6	\$282/acre
Sale #8	\$302/acre
Sale #7	\$303/acre
Sale #2	\$384/acre
Sale #17	\$384/acre
Sale #14	\$409/acre
Sale #15	\$412/acre
Sale #16	\$415/acre
Sale #12	\$491/acre

The median for this array is \$384 per acre.⁶ When using the array for purposes of the valuation of the subject property, the median was used as an indicator of market value, and was deemed to represent 100% of actual value for grassland in Market Area 1. As such, the median was multiplied by 75% to determine taxable value.⁷ In other words, using the median of these nine sales, the array indicated taxable value per acre of \$288 ($\$384 \times .75$).

Regarding the use of these nine sales to estimate the value of grassland in Market Area 1, Hansmeier testified that Sale #2 should not be included because at the relevant times it was used for recreational purposes, not for pasturing livestock. He also asserted that Sale #17 should not be included because it was combined with the sale of another parcel, Sale #18,⁸ which included improvements in addition to the grassland. Hansmeier testified that the array should thus have

⁵ The LVG per acre amounts for Market Area 1 grassland in 4G and 4G1 are consistent with the same amounts in *2010 Reports & Opinions of the Property Tax Administrator, Keith County*, page 26, April, 2010.

⁶ The median is a measure of central tendency. The median is the middle value of an uneven number of arrayed values. *The Dictionary of Real Estate Appraisal, Fourth Edition*, Appraisal Institute (2002), p 180. In this array, Sale #17 is the median value as it is in the middle of the nine sale prices.

⁷ For agricultural land and horticultural land, taxable value, or assessed value, is 75% of actual value per Neb. Rev. Stat. §77-201(2) (Reissue 2009).

⁸ Exhibit E5:58-60.

included only seven sales. Hansmeier also contended that the resulting median should have been multiplied by .72 rather than by .75.⁹

Cheryl Schiel testified on behalf of the County Board. At the time of the hearing, Schiel was the Keith County Assessor. Schiel's testimony included a review of the Appraiser's Report. She agreed with Hansmeier that Sale #2 should not be included in the array of comparable sales because, she said, it was substantially changed.¹⁰ She testified that at the relevant time a portion of the parcel in Sale #2 was in CRP (the Conservation Reserve Program) and the rest was being used for recreational purposes. Schiel also agreed that Sale #17 should not be included in the array of sales because Sale #17 was a combined sale with Sale #18, which included improvements in addition to the grassland. Schiel also gave her opinion that Sale #15 and Sale #16 should be combined in the array, because they were both part of the same transaction. As a result, it was Schiel's opinion that the grassland sales should have been arrayed as follows:

Sale #6	\$282/acre
Sale #8	\$302/acre
Sale #7	\$303/acre
Sale #14	\$409/acre
Sales #15 & #16	\$414/acre
Sale #12	\$491/acre

The median for this array is \$356 per acre.¹¹ Schiel also gave the opinion that these 4G and 4G1 grassland sales¹² were comparable to the 4G and 4G1 grassland acres of the subject property.

Based upon the evidence received, the Commission finds there is clear and convincing evidence that the actual value of 4G and 4G1 grassland in Market Area 1 of Keith County for tax year 2010 is \$356 per acre. Per Neb. Rev. Stat. §77-201(2), the Commission finds that taxable value of the 4G and 4G1 grassland is \$267 per acre.¹³

Therefore, taxable value for the subject property for tax year 2010 should be as follows:

⁹ Neb. Rev. Stat. §77-201(2) is mandatory; taxable value for agricultural land and horticultural land must be 75% of actual value.

¹⁰ A sale is non-qualified when the property, as assessed, is "substantially different in its characteristics then [sic] from the property as it was when sold." Title 350 NAC ch. 12 §002.10 (3/15/09).

¹¹ The median is the average of the two central values of an even number of arrayed values. *The Dictionary of Real Estate Appraisal, Fourth Edition*, Appraisal Institute (2002), p. 180. In this array, Sale #17 and Sale #14 are the two central values. The average of \$303 and \$409 is \$356.

¹² The sales in the array consist of 4G and 4G1 grassland only. The sales provide no competent evidence of the actual value of any other LVG.

¹³ $\$356 \times .75 = \267 .

Case #10A-036	158.93 acres ¹⁴ x \$267 = \$ 42,434
Case #10A-037	650.68 acres ¹⁵ x \$267 = \$173,732
Case #10A-038	645.76 acres ¹⁶ x \$267 = \$172,418
Case #10A-039	480.79 acres ¹⁷ x \$267 = \$128,371

V. CONCLUSION

The Commission finds that the Taxpayer has 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 provided 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 vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Keith County Board of Equalization determining the value of the subject property for tax year 2010 is reversed.¹⁸
2. The assessed value of the subject property for tax year 2010 is:

Case #10A-036	\$ 42,434
Case #10A-037	\$173,732
Case #10A-038	\$172,418
Case #10A-039	\$128,371

3. This decision and order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)

¹⁴ E14:3-4

¹⁵ E14:5-6

¹⁶ E14:7-8

¹⁷ E14:1-2

¹⁸ 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.

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 February 7, 2012.

Signed and Sealed: February 7, 2012

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 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.