BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Arrowhead Meadows Golf Course & Recreation Area, Inc. Appellant, v. Frontier County Board of Equalization Appellee	Case No: 10C-044 Order Reversing the Determination of the Frontier County Board of Equalization

For the Appellant:
Kent A. Schroeder,
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For the Appellee:
Steven P. Vinton,
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Heard before Commissioners Robert W. Hotz, Nancy J. Salmon, and Thomas D. Freimuth

I. THE SUBJECT PROPERTY

The Subject Property consists of commercial improvements on leased public land located in Frontier County, Nebraska. The underlying parcel is public land, owned by the City of Curtis, and is leased to the Arrowhead Meadows Golf Course & Recreation Area, Inc. (Arrowhead Meadows). E7. Arrowhead Meadows improved the parcel with several buildings and a nine-hole golf course which it has operated since 1996. The legal description of the subject property is found on the property record card. E4.

II. PROCEDURAL HISTORY

The Frontier County Assessor determined that the assessed value of the Subject Property improvements on leased public land was $268,833 for tax year 2010, including $115,833 for several buildings and paving, and $153,000 for the nine golf greens. E4:1. Arrowhead Meadows protested this assessment to the Frontier County Board of Equalization (County Board) and requested an assessed valuation of $135,000, including $90,000 for the buildings and paving, and $45,000 for the golf greens. E1:1. The County Board determined that the assessed value for tax year 2010 was $160,833, including $115,833 for the buildings and pavement, but $45,000 for the greens. E1:1.

Arrowhead Meadows appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). As ordered by the Commission, the parties exchanged exhibits prior to the hearing.

III. STANDARD OF REVIEW

The Commission's review of the determination by a 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).[1] 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)

[1] "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 Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

(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). "Actual 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).

"Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property." Neb. Rev. Stat. §77-1374 (Reissue 2009).

B. Summary of the Evidence

For the sake of completeness, we note that Arrowhead Meadows first argues that the subject property should be exempt from taxation under Neb. Rev. Stat. §77-202 (2010 Cum. Supp.). While this appeal is de novo[2], there is no evidence in the record that Arrowhead Meadows properly filed for an exemption for tax year 2010. In fact, the County Assessor testified that Arrowhead Meadows did not file a Form 451, which would be required to be filed with the County Assessor and acted upon by the County Board in order for an exemption to be at issue in this appeal.[3] Therefore, the Commission cannot find that the subject property is exempt from taxation.

It is not disputed that Arrowhead Meadows leases public land owned by the City of Curtis, (E7), or that since 1996 Arrowhead Meadows has improved the leasehold with a clubhouse, a shop, two cart storage buildings, concrete paving, and grass greens. E4:1. Arrowhead Meadows did not contest and there was no competent evidence presented disputing the value of the clubhouse, the shop, the cart storage buildings, or the concrete paving.[4] Therefore, the Commission finds that the contribution to value of those improvements at a total of $115,833 was not incorrect.

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[2] *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 753 N.W.2d 802, (2008).

[3] "Any organization or society seeking a property tax exemption for real or personal property, other than motor vehicles, shall file Exemption Application, Form 451, on or before December 31 of the year preceding the year for which the exemption is sought, with the assessor of the county in which the property is located." Title 350, ch 40 §006.01, Rev. 3/15/09, See also Neb. Rev. Stat 77-202.01 (Reissue 2009).

[4] The County Board determined this value to be $115,833, based upon the recommendation of the County Assessor. E1:1.

The remaining issue is the determination of value of the grass greens. Arrowhead Meadows argues that what was assessed as grass greens should not have been valued as real property improvements, but rather as personal property. The County Assessor testified she assessed the greens as improvements, not as personal property. She stated that she relied upon Rules promulgated by the Property Assessment Division in making this determination, which read, "[i]mprovement shall mean any addition made to real property, amounting to more than mere repairs, such as sidewalks, streets, sewers or utilities. Title 350, Chapter 10-001.01C, Rev. 3/15/09. The evidence suggested that the grass greens consisted of typical golf course features, including tee boxes, fairways, and putting greens. No evidence was received that the grass greens were in any way limited to sidewalks, streets, sewers or utilities. The Commission finds that what was assessed as grass greens were improvements, and should be assessed as improvements on leased public land, together with the value of the lease, per Neb. Rev. Stat. § 77-1374 (Reissue 2009).

The evidence of value of the grass greens offered by Arrowhead Meadows included the County Board's determination of value of $5,000 per grass green. Arrowhead Meadows also offered property record cards for numerous Nebraska golf courses, but no evidence was offered regarding the comparability of these properties to the subject property, nor were any adjustments to these comparables quantified to assist in determining the value of the subject property. E18 to E36. The County Assessor testified that the County Board adopted the requested value at the protest proceeding based upon its stated desire to help Arrowhead Meadows.

Larry Rexroth, a licensed appraiser hired by the County Assessor, appraised the grass greens on the Subject Property at $153,000 ($17,000 per grass green). The County Assessor testified that the appraisal consisted of a sales comparison of three Nebraska nine-hole golf courses, indicating a market value of $17,000 per grass green. E6.[5] No evidence of value using the cost

[5] There is a presumption that the assessing official has performed his or her duties according to law. *See, State ex rel. Bee Building Co. v. Savage,* 65 Neb. 714 (1902)*; Woods v. Lincoln Gas & Electric Co.,* 74 Neb. 526 (1905)*; Brown v. Douglas Co.,* 98 Neb. 299 (1915); *Gamboni v. County of Otoe,* 159 Neb. 417 (1954); *Ahern v. Board of Equalization,* 160 Neb. 709 (1955); *Collier v. Logan County,* 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization,* 179 Neb. 415 (1965).

approach was utilized by either party.[6] The Commission finds that the appraisal by the County Assessor is clear and convincing evidence of the value of the grass greens.

The only remaining inquiry, as directed by Neb. Rev. Stat. §77-1374, is the value of the lease. The only evidence offered regarding the value of the lease was the $1 per year paid by Arrowhead Meadows to the City of Curtis under the terms of the lease (E7:2), and the County Assessor's testimony that the lease amount actually paid was less than fair market value.

V. CONCLUSION

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 also finds there is 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 should be reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Frontier County Board of Equalization determining the value of the Subject Property for tax year 2010 is reversed.
2. The assessed value of the Subject Property improvements on leased public lands for tax year 2010 is as follows:

Grass Greens	$153,000
Buildings & Paving	$115,833
Total	$268,833

[6] Per Marshall Valuation Service, using the cost approach for Golf Courses, "[i]ncluded in the cost per hole are normal clearing of land, including incidental grading, complete irrigation and drainage systems, planting of trees in open land, greens, tees, fairways, service roads and cart paths, builder's profit and overhead, financing during construction and architects' fees for all items except structures." According to Marshall, a "[m]inimal quality, simply developed, budget course, on open natural or flat terrain, few bunkers, small tees and greens" would have a cost range of $66,250 to $90,750 per hole. *Marshall*, Section 67, page 1.

3. This decision and order, if no appeal is timely filed, shall be certified to the Frontier County Treasurer and the Frontier County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 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 June14, 2012.

Signed and Sealed: June 14, 2012

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner

SEAL

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.

Commissioner Thomas D. Freimuth, dissenting,

While I agree with Commissioners Hotz and Salmon regarding the exemption issue noted above, I would affirm the decision of the Frontier County Board of Equalization ("BOE") for the reasons outlined below.

As noted in the majority opinion, under the terms of a 1996 lease, Arrowhead Meadows Golf Course, Inc. ("Taxpayer") leases land owned by the City of Curtis for the purpose of operating a nine-hole golf course. The Taxpayer has improved the leasehold with several buildings, concrete paving and grass greens.

Section 77-1374 of the Nebraska Statutes requires that "[i]mprovements on leased public land shall be assessed, together with the value of the lease, to the owner of the improvements as real property." Prior to the 2010 tax year, the County assessed the improvements described above other than the grass greens. As a part of a 2010 commercial reappraisal, the County Assessor assessed the Subject Property's nine grass greens in the total amount of $153,000 ($17,000 per green), together with an assessment in the amount of $115,833 with respect to other improvements.

The Taxpayer's protest before the BOE requested a valuation of the grass greens in the amount of $45,000 ($5,000 per green) and a $90,000 valuation for the remainder of the improvements. At the hearing before the Commission, the Taxpayer asserted that the $17,000 per green assessment imposed by the County Assessor was unreasonable. The Taxpayer did not, however, dispute the $115,833 assessment applied to the improvements other than the grass greens. Therefore, the sole dispute in this case other than the exemption issue noted above is the contribution to value attributable to the grass greens.

The County Assessor, Regina Andrijeski, testified that she assessed each of the nine grass greens in the amount of $17,000 in reliance upon a sales comparison appraisal by Larry Rexroth. The County Assessor also testified that the BOE hearing on the Taxpayer's protest involved consideration of the Taxpayer's request to reduce the per green assessment amount from $17,000 to $5,000. I note that the BOE report set forth at Exhibit 3 states that the Taxpayer's basis for this request was that the $17,000 per grass green assessment amount "is not consistent with other similarly located 9-hole golf courses."

According to Ms. Andrijeski's testimony and the Exhibit 3 BOE report, she and Mr. Rexroth recommended that the BOE uphold the $17,000 assessment for the reason that the Taxpayer did not present any evidence to support the $5,000 valuation. According to Ms. Andrijeski, notwithstanding this recommendation, the BOE lowered the per green valuation to $5,000.

I am mindful of the economic challenges confronted by businesses such as the Arrowhead golf course in small rural communities like Curtis. Nonetheless, in substantial part because no members of the BOE testified at the hearing before the Commission, the evidence in this case is

insufficient to show that the BOE reduced the per green valuation from $17,000 to $5,000 with justification. Therefore, I find that there is competent evidence to rebut the presumption that the BOE faithfully performed its duties and had sufficient competent evidence to make its determination.

While competent evidence exists to rebut the presumption referenced in the previous paragraph, the Commission should have then determined whether evidence exists to find that the BOE's determination of value is unreasonable. In this regard, as indicated under the "Standard of Review" section of the majority opinion, when the Commission considers an appeal from 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.

In analyzing the "reasonableness" of the valuation determined by the BOE, I examined Mr. Rexroth's appraisal. I note that Mr. Rexroth did not appear at the hearing before the Commission. His appraisal was, however, received by the Commission as Exhibit 6. The County Assessor testified that she believed Mr. Rexroth's appraisal is sufficient for purposes of assessing the total value of the grass greens at $153,000.

For purposes of determining whether the valuation determined by the BOE is unreasonable, I respectfully find that the appraisal relied upon by the County Assessor and the majority opinion are problematic for the following reasons:

1. The County Assessor's Appraiser, Mr. Rexroth, did not appear at the hearing. Consequently, the Taxpayer and the Commission were unable to sufficiently examine the County's appraisal.

2. In response to cross-examination by Taxpayer's counsel, the County Assessor acknowledged that she did not review the details of the County's appraisal with Mr. Rexroth.
3. In response to cross-examination by Taxpayer's counsel, the County Assessor acknowledged that she was unaware of the location of two of the three alleged comparables (Sandy Meadows and Craneview). After the County Assessor became aware of the location of Sandy Meadows (Waco in the York area) and Craneview (Axtell in the Kearney area), she acknowledged that these courses and alleged comparable Kearney Elks Lodge were at least a 1.25-hour to 3-hour drive from the Subject Property. I also note that these three alleged comparables are in areas that differ significantly in terms of commercial activity and proximity to large population centers as compared to the Subject Property. See generally, the 2010 Reports & Opinions of the Property Tax Administrator.
4. The Taxpayer's cross-examination of the County Assessor also created uncertainty in terms of whether the comparables used in the County's Appraisal were in fact comparable and subject to proper adjustment. In this regard, I note that Minden Country Club's appeal from a decision of the Kearney County BOE in tax year 2009 involved an appraisal prepared by Mr. Rexroth that is identical to his appraisal relied upon by the Frontier County Assessor in the instant case. The Nebraska Court of Appeals stated as follows with respect to Mr. Rexroth's appraisal in the Minden Country Club case, and I note that this language is consistent with the evidence elicited during the cross-examination of the County Assessor in the Arrowhead Meadows Golf Course, Inc. case:

> Bart Woodward, a licensed and certified general appraiser, reviewed Kearney County's appraisal of Minden Country Club for 2009. He did not have an opinion as to the value of the greens. He testified that Craneview was a new golf course and housing development south of Kearney that had platted lots for sale. He believed Rexroth erred when he testified that Craneview was not platted and was not for sale. Woodward felt that Rexroth's valuation of Craneview was very low and that there should have been value allocated to the housing lots that were for sale because Woodward felt that they had more value than just straight pastureland. According to Woodward, Craneview was not functioning as a golf course at the time of its sale. Woodward testified that the Kearney Elks Lodge could be used as a comparable sale but that allowances needed to be made and that Rexroth did not make any allowances. Woodward testified that Sandy Meadows was not a comparable sale because there was no sale at all—the $400, 000 was an asking price. He spoke with the York County assessor about valuing greens and discovered that the assessor "had a unique way of doing it. She called in the owner and they negotiated." Woodward did not believe that Rexroth properly valued the Minden Country Club because Rexroth did not "make any allocation for excess land" and because one of the comparable sales was not a sale at all.

Minden Country Club, Inc. v. Kearney County Board of Equalization, Neb.App. A-10-1139 (2011). While I acknowledge that the Court of Appeals upheld the Kearney County's BOE's reliance upon Mr. Rexroth's $17,000 per green valuation in the Minden Country Club case -- in substantial part because the Taxpayer did not adduce clear and convincing evidence of actual value -- I find the above language useful for purposes of determining whether the Frontier BOE's decision to disregard the County's Appraisal is unreasonable.

5. The Taxpayer also submitted Exhibit 10, which includes the 2010 Nebraska Golf Association's Golf Course Directory. While Arrowhead Meadows, the Taxpayer, is listed in this Directory, it does not contain a listing for any of the alleged comparables used in Mr. Rexroth's Appraisal. This creates additional uncertainty in terms of whether the comparables used in the County's Appraisal were in fact comparable and subject to proper adjustment.
6. The Taxpayer produced evidence to support its assertion that the value of greens for tax assessment purposes of multiple golf courses in small communities throughout Nebraska varies significantly, which I find useful for the purpose of determining that the valuation fixed by the County Board was reasonable. See, Exhibits 18 through 36. Respectfully, this evidence also diminishes the persuasiveness of Ms. Andrijeski's testimony that the County Board lowered the per green valuation from $17,000 to $5,000 without justification.
7. While I recognize that assessed values are not competent evidence of actual value, I note that Exhibit 19 page 4, which is a portion of a Clay County Property Record Card, shows that the greens in Clay Center are valued at approximately $10,000 per green for assessment purposes. Moreover, Exhibit 20 page 8, which is a portion of a Nuckolls County Property Record Card, shows that the greens in Superior are valued at $6,244 per green for assessment purposes.

In light of the above, this Commissioner respectfully finds that Mr. Rexroth's appraisal is not competent evidence for purposes of supporting the County Assessor's $17,000 per green assessment. It follows that sufficient evidence has not been adduced to show that the BOE's reduction to $5,000 per green is unreasonable. Therefore, the BOE's determination in this matter should be upheld.

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Thomas D. Freimuth, Commissioner