

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

Mark S. Andrew,  
Appellant,

v.

Nemaha County Board of Equalization,  
Appellee,

Case Nos: 11A-013, 11A-014

Orders Affirming the Determinations by the  
Nemaha County Board of Equalization

**For the Appellant:**

Mark S. Andrew,  
Pro Se

**For the Appellee:**

Louie Ligouri,  
Nemaha County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of two distinct agricultural parcels located in Nemaha County, Nebraska. The legal descriptions of the Subject Properties are found at Exhibits 1 and 2.

**II. PROCEDURAL HISTORY**

For tax year 2011, the Nemaha County Assessor determined that the assessed value of the Subject Property was \$234,815 for the parcel in 11A-013, and \$163,845 for the parcel in 11A-014. Mark S. Andrew protested these assessments to the Nemaha County Board of Equalization (County Board) and requested assessed valuations of \$152,095 in 11A-013, and \$81,600 in 11A-014. The County Board determined that the taxable values for tax year 2011 were in the same amounts as assessed.<sup>1</sup>

Andrew appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on September 24, 2012.

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<sup>1</sup> Exhibits 1 and 2.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup> 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."<sup>3</sup>

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.<sup>4</sup>

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

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup> 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.<sup>8</sup>

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."<sup>9</sup> 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

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<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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

<sup>7</sup> 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).

<sup>8</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>10</sup>

#### 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.<sup>11</sup>

“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.”<sup>12</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>13</sup> 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.<sup>14</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>15</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>16</sup>

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.<sup>17</sup>

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<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>12</sup> *Id.*

<sup>13</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>14</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>15</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>16</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>17</sup> 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.”<sup>18</sup> “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...”<sup>19</sup>

## **B. Summary of the Evidence**

Mark Andrew testified that the assessed value of the Subject Properties had been adversely affected by Missouri River floodwaters for each of the four years beginning in 2008 and ending in 2011. When considering the evidence, the Commission will focus on the events occurring most closely to and prior to the assessment date of January 1, 2011.<sup>20</sup>

Andrew testified that in 1998 or 1999 the Corps of Engineers stopped dredging the Missouri River. In his opinion, this, in combination with upriver water releases to accommodate recreational purposes above the dams, has resulted in nearly-yearly Missouri River flooding in Nemaha County in the most recent years. Andrew offered Exhibits regarding Missouri River dams, crests, and flooding.<sup>21</sup>

In each of the four years 2008 through 2011, Andrew testified that he planted a crop prior to flooding. In 2008 and 2009, the Subject Properties still produced about 75% yield despite the flooding. In 2010, production for the Subject Property was about 40%. In 2011, flooding prevented any production of crop on the Subject Property even though the corn had already tasseled prior to the flooding beginning June 17, 2011. Andrew said that he had received crop insurance in relation to flooding on the Subject Property.

Andrew testified that the Subject Property is in a flood plain for lending purposes. He asserted that because of the incidence of flooding on the Subject Properties they should be assessed differently from other parcels with similar soil types.

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<sup>18</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>21</sup> The Commission received Exhibit 3, and pages 1-2 of Exhibit 4. The County Board’s objection to the receipt of the balance of Exhibit 4 was sustained on the basis that it was not timely filed.

For the 2010 tax year, Andrew testified that the Subject Property received a flood adjustment at the time of his protest.<sup>22</sup> He stated that after he protested his 2010 assessments, the Assessor in office at the time<sup>23</sup> recommended flood adjustments be made to the assessed value of his properties for tax year 2010, and the County Board agreed with the recommendations. The record before the Commission does not contain any basis for a calculation of a flood adjustment recommended by the Assessor and adopted by the County Board at the 2010 protest proceedings. Moreover, Andrew did not state a rationale for why the taxable value of the Subject Property should be at his requested values rather than at the values determined by the County Board.

Andrew also offered the property record cards for the Subject Properties.<sup>24</sup> According to the property record cards, the acres of the Subject Properties were assessed by soil type and land use.

Jana Smith testified on behalf of the County Board. Smith testified that she had been the Nemaha County Assessor since January, 2011, and that from 1990 to 2011, she had served as the Deputy County Assessor. She testified that the Subject Properties were assessed for tax year 2011 using a mass appraisal sales comparison approach. Smith testified that she was aware of the flood adjustments that were made at protest proceedings in 2010, but she was unaware of what rationale, measurement, or other quantifiable factor was used by either the Assessor or the County Board to determine whether an adjustment should be made for tax year 2010, or what percentage should be applied if an adjustment were made. Smith stated that the only agricultural parcels that received a flood adjustment for tax year 2010 were those where the owners had protested the assessments to the County Board. Smith testified that she determined that no flood adjustments should be made for the Subject Properties for tax year 2011.

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<sup>22</sup> While it is true that, “[t]he prior year’s assessment is not relevant to the subsequent year’s valuation,” (*DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944); *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988)), the Commission has weighed the probative value of the evidence in order to understand the basis for the flood adjustments that were afforded for 2010 tax year, but not for 2011 tax year, when the balance of the evidence indicated that significant flooding occurred in both 2009 and 2010.

<sup>23</sup> The Nemaha County Assessor at the time of the 2010 tax year assessment, and at the time of the 2010 County Board of Equalization protests was not the Assessor serving at the time of this hearing, who took office in January 2011 and who assessed the subject properties for 2011.

<sup>24</sup> Exhibits 5 and 6.

## V. EQUALIZATION

### A. Law

“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 this Constitution.”<sup>25</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>26</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>27</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>31</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his [or her] property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>32</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>33</sup>

### B. Summary of the Evidence

No evidence was offered by either party of sales of properties comparable to the Subject Properties. Likewise, there was no evidence in the record of property record cards of

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<sup>25</sup> *Neb. Const.*, Art. VIII, §1.

<sup>26</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>27</sup> *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).

<sup>28</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>29</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>30</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>31</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>32</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>33</sup> *Id.* at 673, 94 N.W.2d at 50.

comparable properties that showed assessments based upon soil types and land use that could be compared to the assessments of the Subject Properties. The Commission therefore did not have any evidence upon which to consider a claim for relief based upon Equalization.

## **VI. CONCLUSION**

Based upon the evidence received, the Commission cannot conclude 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 that there is not 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.

## **VII. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Nemaha County Board of Equalization determining the taxable values of the Subject Properties for tax year 2011 are affirmed.
2. The taxable value of the Subject properties for tax year 2011 is as follows:

11A-013	\$234,815
11A-014	\$163,845

3. This Order, if no appeal is timely filed, shall be certified to the Nemaha County Treasurer and the Nemaha 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 Order shall only be applicable to tax year 2011.

7. This order is effective for purposes of appeal on October 1, 2012.

Signed and Sealed: October 1, 2012.

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Robert W. Hotz, Commissioner

SEAL

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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.



