

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Don L. Clarke,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case Nos: 11A 032, 11A 033, 11A 034,
11A 035, 11A 036, 12A 015, 12A 016,
12A 017, 12A 018, 12A 019, 13A 023,
13A 024, 13A 025, 13A 026 & 13A 027

Decision and Order
Affirming the Determinations by the Dodge
County Board of Equalization

For the Appellant:

Don L. Clarke,
Pro Se

For the Appellee:

Stacy Hultquist,
Chief Deputy Dodge County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property in appeals 11A 032, 12A 015, and 13A 023 is a 60 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 19, 25 and 26.

The Subject Property in appeals 11A 033, 12A 016, and 13A 024 is a 69.05 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 20, 24, and 30.

The Subject Property in appeals 11A 034, 12A 017, and 13A 025 is a 24.45 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibit 16, 23, and 27.

The Subject Property in appeals 11A 035, 12A 018, and 13A 026 is a 9.32 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibit 17, 22, and 28.

The Subject Property in appeals 11A 036, 12A 019, and 13A 027 is a 9.59 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibit 18, 21, and 29.

II. PROCEDURAL HISTORY

The Dodge County Assessor (Assessor) determined that the assessed value of the Subject Property in appeals 11A 032, 12A 015, and 13A 023 was \$73,350 for tax years 2011,¹ 2012,² and 2013.³ Don L. Clarke (the Taxpayer) protested this assessment to the Dodge County Board of Equalization (the County Board) and requested a decreased assessed valuation for tax years 2011,⁴ 2012,⁵ and 2013.⁶ The County Board determined that the assessed value was \$73,350 for tax years 2011,⁷ 2012,⁸ and 2013.⁹

The Assessor determined that the assessed value of the Subject Property in appeals 11A 033, 12A 016, and 13A 024 was \$90,675 for tax years 2011,¹⁰ 2012,¹¹ and 2013.¹² The Taxpayer protested this assessment to the County Board and requested a decreased assessed valuation for tax years 2011,¹³ 2012,¹⁴ and 2013.¹⁵ The County Board determined that the assessed value was \$90,675 for tax years 2011,¹⁶ 2012,¹⁷ and 2013.¹⁸

The Assessor determined that the assessed value of the Subject Property in appeals 11A 034, 12A 017, and 13A 025 was \$28,575 for tax years 2011,¹⁹ 2012,²⁰ and 2013.²¹ The Taxpayer protested this assessment to the County Board and requested a decreased assessed valuation for

¹ E33:12.

² E33:6.

³ E33:1.

⁴ E1:2.

⁵ E6:2.

⁶ E11:2.

⁷ E33:12.

⁸ E33:6.

⁹ E33:1.

¹⁰ E33:11.

¹¹ E33:7.

¹² E33:2.

¹³ E2:2.

¹⁴ E7:2.

¹⁵ E12:2.

¹⁶ E33:11.

¹⁷ E33:7.

¹⁸ E33:2.

¹⁹ E33:15.

²⁰ E33:8.

²¹ E33:3.

tax years 2011,²² 2012,²³ and 2013.²⁴ The County Board determined that the assessed value was \$28,575 for tax years 2011,²⁵ 2012,²⁶ and 2013.²⁷

The Assessor determined that the assessed value of the Subject Property in appeals 11A 035, 12A 018, and 13A 026 was \$13,980 for tax years 2011,²⁸ 2012,²⁹ and 2013.³⁰ The Taxpayer protested this assessment to the County Board and requested a decreased assessed valuation for tax years 2011,³¹ 2012,³² and 2013.³³ The County Board determined that the assessed value was \$13,980 for tax years 2011,³⁴ 2012,³⁵ and 2013.³⁶

The Assessor determined that the assessed value of the Subject Property in appeals 11A 036, 12A 019, and 13A 027 was \$7,635 for tax years 2011,³⁷ 2012,³⁸ and 2013.³⁹ The Taxpayer protested this assessment to the County Board and requested a decreased assessed valuation for tax years 2011,⁴⁰ 2012,⁴¹ and 2013.⁴² The County Board determined that the assessed value was \$7,635 for tax years 2011,⁴³ 2012,⁴⁴ and 2013.⁴⁵

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits. The Commission also issued several orders in response to pre-hearing motions filed by the Taxpayer. The Commission held a hearing on November 27, 2013.

²² E3:2.

²³ E8:2.

²⁴ E13:2.

²⁵ E33:15.

²⁶ E33:8.

²⁷ E33:3.

²⁸ E33:14.

²⁹ E33:9.

³⁰ E33:4.

³¹ E4:2.

³² E9:2.

³³ E14:2.

³⁴ E33:14.

³⁵ E33:9.

³⁶ E33:4.

³⁷ E33:13.

³⁸ E33:10.

³⁹ E33:5.

⁴⁰ E5:2.

⁴¹ E10:2.

⁴² E15:2.

⁴³ E33:13.

⁴⁴ E33:10.

⁴⁵ E33:5.

III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.⁴⁶ 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.”⁴⁷

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.⁴⁸

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.⁴⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵⁰

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁵¹ 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.⁵²

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

⁴⁶ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “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).

⁴⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴⁸ *Id.*

⁴⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁵⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁵¹ 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).

⁵² *Bottof v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”⁵³ 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.”⁵⁴

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.⁵⁵

“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.”⁵⁶ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”⁵⁷ 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.⁵⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁵⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁶⁰

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.

⁵³ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁵⁴ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

⁵⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁵⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁵⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁵⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁵⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

⁶⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.⁶¹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”⁶²

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.⁶³

B. Summary of the Evidence

Brittney King, the Dodge County Assessor, testified that the Subject Properties were valued using a mass appraisal sales comparison approach. King testified that the Subject Properties were classified as recreational land, not as agricultural and horticultural land, because: (1) the highest and best use for the Subject Properties was as recreational land; and (2) during the relevant time periods actual use of the Subject Properties was as recreational land and not as agricultural land. She testified that she utilized sales of recreational land to determine the taxable value of the Subject Properties. King stated that her determinations regarding the classification of the Subject Properties as recreational land were made by personal inspection and by reviewing aerial photography of the Subject Properties. She also testified that the Subject Properties were assessed in tax years 2010, 2011, and 2012 as not being subject to a conservation easement.

Don L. Clarke testified that the Subject Properties should have been assessed each tax year with consideration given for conservation easements restricting the use of the land. However, Clarke admitted that while he had entered into an Agreement For The Purchase Of Conservation Easement,⁶⁴ had been offered to enter the land into a Conservation Stewardship Program

⁶¹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

⁶² Neb. Rev. Stat. §77-132 (Reissue 2009).

⁶³ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

⁶⁴ Exhibit 31:213-216, dated August 25, 2009.

(CSP),⁶⁵ and had filed a Conservation Program Application,⁶⁶ he had not at any relevant time executed a warranty easement deed or any other deed in relation to a conservation easement and the Subject Properties. Clarke asserted that the Subject Properties should not be assessed as recreational land, yet he admitted that he made no agricultural use of the land and used the land for hunting during hunting seasons. Clarke provided no evidence to quantify the taxable value of the Subject Properties.

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.”⁶⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁶⁸ 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.⁶⁹ 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.⁷⁰ 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.⁷¹ 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.⁷² The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁷³ 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

⁶⁵ Exhibit 31:150, dated December 19, 2011.

⁶⁶ Exhibit 31:142-149. Application date December 27, 2011.

⁶⁷ *Neb. Const.*, Art. VIII, §1.

⁶⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁶⁹ *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).

⁷⁰ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁷¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁷² *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).

⁷³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

error of judgment [sic].”⁷⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁷⁵

B. Summary of the Evidence

Clark asserted that the sale of an alleged comparable parcel should determine the taxable values of the Subject Properties. The property record card for the alleged comparable parcel indicates that two parcels were sold together at auction.⁷⁶ Clarke testified to his personal knowledge that the auction was well advertised. King testified that the alleged comparable parcel was not comparable to any of the Subject Properties in that it was valued as agricultural land and horticultural land and received special valuation. Clarke provided no evidence to quantify the differences between the alleged comparable parcel and the Subject Properties.

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board are affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dodge County Board of Equalization determining the value of the Subject Property for tax years 2011, 2012 and 2013 are affirmed.
2. The taxable value of the Subject Property in appeals 11A 032, 12A 015, and 13A 023 for tax years 2011, 2012, and 2013 is \$73,350.
3. The taxable value of the Subject Property in appeals 11A 033, 12A 016, and 13A 024 for tax years 2011, 2012, and 2013 is \$90,675.

⁷⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁷⁵ *Id.* at 673, 94 N.W.2d at 50.

⁷⁶ E31:236-241.

4. The taxable value of the Subject Property in appeals 11A 034, 12A 017, and 13A 025 for tax years 2011, 2012, and 2013 is \$28,575.
5. The taxable value of the Subject Property in appeals 11A 035, 12A 018, and 13A 026 for tax years 2011, 2012, and 2013 is \$13,980.
6. The taxable value of the Subject Property in appeals 11A 036, 12A 019, and 13A 027 for tax years 2011, 2012, and 2013 is \$7,635.
7. This Decision and Order, if no appeal is timely filed, shall be certified to the Dodge County Treasurer and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
8. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
9. Each party is to bear its own costs in this proceeding.
10. This Decision and Order shall only be applicable to tax years 2011, 2012, and 2013.
11. This Decision and Order is effective for purposes of appeal on December 5, 2013.

Signed and Sealed: December 5, 2013

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.), and other provisions of Nebraska Statutes and Court Rules.