

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Val Deane Snyder,
Appellant,

v.

Kimball County Board of Equalization,
Appellee.

Case No: 11A 025

Decision Affirming Kimball County Board
of Equalization

For the Appellant:

Val Deane Snyder,
Pro Se.

For the Appellee:

Robert M. Brenner,
Special Kimball County Attorney.

The appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 640.76 acre mixed use parcel located in Kimball County, Nebraska. The 14-page Property Record File for the Subject Property, which contains its legal description, is found at Exhibit 24.

II. PROCEDURAL HISTORY

The Kimball County Assessor determined that the assessed value of the Subject Property was \$152,220 for tax year 2011. Val Deane Snyder (herein referred to as the “Taxpayer”) protested this assessment to the Kimball County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$103,655. The County Board determined that the assessed value for tax year 2011 was \$130,465.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as “Commission”). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on July 25, 2012.

¹ E1:1.

III. STANDARD OF REVIEW

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

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.⁴

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

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

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

² 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).

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

⁷ 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).

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

cross appeal.”⁹ 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.”¹⁰

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.¹¹

“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.”¹² The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

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.

⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

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

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

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

¹⁶ 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.¹⁷

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”¹⁸

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.¹⁹

B. Summary of the Evidence

The Subject Property is a 640.76 acre parcel, but the only issue raised in this appeal is the assessed valuation of the portion of the Subject Property assessed as commercial based on its use in a gravel operation that stores and processes gravel. The Taxpayer contended that a leased portion of the Subject Property used to store and process gravel from a mine on land adjacent to the Subject Property was overvalued for the following reasons: (1) the gravel operation subject to the lease was situated on 16.9 acres rather than the 28.22 acres used by the County Assessor for calculation purposes in her document entitled “Assessor’s Recommendation” found at Exhibit 5; and (2) the 16.9 acres subject to the lease should be valued as \$200 per acre agricultural grassland rather than the \$1,000 per acre commercial use value contained in the Assessor’s Recommendation.

The Taxpayer testified that he used a computer system to calculate that the actual area of the gravel operation was 16.9 acres. The Taxpayer also testified that the computer map he used to calculate the 16.9 acre gravel operation area is shown as a screenshot at Exhibit 31. The map found at Exhibit 31 is dated January 24, 2006.

¹⁷ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-132 (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

With respect to his contention that the gravel operation should be valued at \$200 per acre as agricultural grassland rather than \$1,000 per acre as commercial use, the Taxpayer testified that the actual mining of gravel occurred on approximately two of the 16.9 acres subject to the lease, but that mining had ceased on this two acre portion of the Subject Property in 2010 or 2009. He also testified that as of the valuation date of January 1, 2011, a portion of the 16.9 acre gravel operation acres was dedicated to gravel processing involving the use of water for washing purposes, while the remaining acres were used for gravel storage. He further testified that he was not sure whether the mining operation on the land adjacent to the Subject Property would proceed in the future.

The Taxpayer asserted that the Winstrom sale relied on by the County Assessor in her Assessor's Recommendation found at Exhibit 5 was not comparable to the Subject Property. He also asserted that the Butler County gravel pits relied on by the County Assessor in her Assessor's Recommendation were not comparable to the Subject Property.

Carl Roberts, a person familiar with both the Subject Property and the Butler County parcel referenced above, was called as witness by the Taxpayer. Mr. Roberts testified concerning the general physical characteristics of the Subject Property and general physical characteristics of the Butler County parcel depicted in Exhibit 6, page 2.

Debora Huff, the Kimball County Assessor, testified that Exhibit 5 sets forth her valuation recommendation to the County Board for the Subject Property's gravel operation for tax year 2011. Exhibit 5, which is a redacted version of the "Assessor's Recommendation" document found at Exhibit 1, page 2, states as follows in pertinent part: (1) the 28.22 acre portion of the Subject Property used for the storage and processing of gravel was valued at \$1,000 per acre; (2) \$1,000 per acre was less than Butler County per acre value for properties with a similar use; (3) a Kimball County property adjacent to the Subject Property's gravel operation sold to Michael and Sherry Winstrom in 2008 for \$1,458 per acre was used for commercial purposes; and (4) because the 28.22 acre portion of the Subject Property was used for a commercial use, the Winstrom sale indicated that \$1,000 per acre was a reasonable valuation for the Taxpayer's gravel operation.

Ms. Huff testified that the area of the Subject Property's gravel operation was calculated using a GIS mapping service, but she was unaware of when the GIS was actually drawn.

Referring to Exhibit 11, she also testified that it appeared that the Kimball County Assessor who preceded her in office valued gravel pits in the amount of \$1,000 per acre as of March 3, 2009. Ms. Huff further testified that she did not know how her predecessor arrived at that \$1,000 per acre valuation, but that she determined it was reasonable for tax year 2011 based upon her conclusion that the Subject Property's gravel operation was valued less than properties in Butler County and the single sale of the Winstrom property for commercial use.

No additional evidence was offered to support a calculation of the actual value of gravel processing and storage land in Kimball County.

Exhibit 6, page 1 is an aerial photo that depicts both the portion of the Subject Property used for gravel storage and processing and adjacent properties. The Commission notes that the Taxpayer interlineated a black line on Exhibit 6, page 1, for purposes of depicting the Subject Property's southern property line. The Commission also notes that the lower left corner of Exhibit 6, page 1 indicates a scale, and that the upper left corner indicates that the map depicts the Subject Property sometime in 2009.²⁰ Measurements and calculations of the portion of Exhibit 6, page 1 that depicts the portion of the Subject Property used for gravel storage and processing supports the County Assessor's 28.22 acre measurement. Additionally, examination of Exhibit 31, which the Taxpayer relied upon in connection with his 16.9 acre calculation, indicates that the map is from 2006, and that the portion of the Subject Property used for gravel storage and processing appears significantly smaller as compared to the 2009 depiction found at Exhibit 6, page 1. Therefore, the Commission finds that the County Assessor's measurement of 28.22 acres is a reasonable measurement for the portion of the Subject Property used for gravel storage and processing.

The Taxpayer's testimony indicates that a portion of the Subject Property was used for gravel processing and storage. Additionally, Exhibit 6, page 2 depicts the presence of gravel processing ponds adjacent to a large area of gravel. Therefore, the Commission finds that a 28.22 acre portion of the Subject Property is used for commercial gravel operation purposes rather than agricultural purposes.

²⁰ E6:1.

While the Commission gives little weight to the County Assessor's assertions that the \$1,000 per acre is supported by evidence that Butler County's values are higher and that the alleged Winstrom commercial sale was more than \$1,000 per acre, the burden to prove that the County Board's opinion of value is unreasonable or arbitrary is on the Taxpayer. The Commission finds that the Taxpayer did not provide clear and convincing evidence that \$1,000 an acre for property used for the storage and processing of gravel is unreasonable.

V. 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 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 appeal of the Taxpayer is denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Kimball County Board of Equalization determining the value of the Subject Property for tax year 2011 is affirmed.²¹
2. The assessed value of the Subject Property for tax year 2011 is: \$130,465.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Kimball County Treasurer and the Kimball County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2011.

²¹ 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.

7. This Decision and Order is effective for purposes of appeal on July 3, 2013.

Signed and Sealed: July 3, 2013.

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 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.