

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Oscar E. Larson,
Appellant,

v.

Richardson County Board of Equalization,
Appellee.

Case Nos: 11A 003, 12A 053 & 13A 001

Decision and Order Affirming the
Determinations of the Richardson County
Board of Equalization

For the Appellant:

Oscar E. Larson,
Pro Se.

For the Appellee:

Douglas Merz,
Richardson County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is an 80 acre parcel located in Richardson County, Nebraska. The legal description of the Subject Property is found at Exhibit 1, page 2. The property record cards for the Subject Property are found at Exhibits 4, 5, and 6.

II. PROCEDURAL HISTORY

The Richardson County Assessor (herein County Assessor) determined that the assessed value of the Subject Property was \$152,039 for tax year 2011.¹ Oscar E. Larson (herein the Taxpayer) protested this assessment to the Richardson County Board of Equalization (herein the County Board) and requested an assessed valuation of \$90,754.² The County Board determined that the assessed value for tax year 2011 was \$152,039.³

The County Assessor determined that the assessed value of the Subject Property was \$166,393 for tax year 2012.⁴ The Taxpayer protested this assessment to the County Board and

¹ E1:2.

² E1:1.

³ E1:1.

⁴ E2:2.

requested an assessed valuation of \$90,754.⁵ The County Board determined that the assessed value for tax year 2012 was \$166,393.⁶

The County Assessor determined that the assessed value of the Subject Property was \$184,466 for tax year 2013.⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$125,000.⁸ The County Board determined that the assessed value for tax year 2013 was \$184,466.⁹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (herein the 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 December 30, 2013.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is *de novo*.¹⁰ 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."¹¹

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.¹²

⁵ E2:1.

⁶ E2:1.

⁷ E3:2.

⁸ E3:1.

⁹ E3:1.

¹⁰ 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).

¹¹ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹² *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.¹³ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁴

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁵ 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.¹⁶

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.”¹⁷ 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.”¹⁸

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.¹⁹

¹³ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁴ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁵ 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).

¹⁶ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁷ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁸ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁹ 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.”²⁰ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”²¹ 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.²² All real property in Nebraska subject to taxation shall be assessed as of January 1.²³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁴

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.²⁵

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²⁶

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.²⁷

²⁰ *Id.*

²¹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²² Neb. Rev. Stat. §77-131 (Reissue 2009).

²³ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²⁴ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁵ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁶ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁷ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

B. Summary of the Evidence

The Taxpayer testified that the Subject Property was composed of low quality soil types that produced low crop yields. The Taxpayer asserted that the soil type rather than the land use was the largest contributing factor to the actual value of agricultural property in Richardson County. The Taxpayer testified that in his opinion the actual value of the Subject Property had not changed during tax years 2011, 2012 and 2013. The Taxpayer asserted that the actual value of the Subject Property was \$125,000 for all three tax years.

The Taxpayer based his opinion of the actual value of the Subject Property on the single sale of an alleged comparable property.²⁸ The alleged comparable property sold at an auction of two parcels of real property.²⁹

The Taxpayer testified that the real property with a legal description of E1/2NW1/4 30-2-15 consisting of 80 acres (herein the Auxier Property) was comparable to the Subject Property.³⁰ The Taxpayer testified that the Auxier Property had poor soil similar to the Subject Property. He also testified that the Auxier Property sold on July 3, 2012.³¹ The Taxpayer testified that he was present at the auction for the sale of the Subject Property, that it was well attended, that it had been advertised in advance of the sale, that multiple attendees had bid on the Auxier Property, and that the son of the previous deceased owner purchased the Auxier Property at the auction. The Auxier Property sold for \$125,000.³²

The Taxpayer further asserted that he was unreasonably assessed for a county road which encroached on the Subject Property.

Wayne L. Cole, staff appraiser for the County Assessor, testified that the Subject Property was valued using a sales comparison approach. Cole testified that all agricultural property is assessed in Richardson County using qualified sales occurring near the date of assessment.³³

²⁸ See, E:7 (Auxier Property Form 521). See also, E17 (the Agland Inventory Reports for the Auxier Property for tax year 2011); E16 (the Agland Inventory Reports for the Auxier Property for tax year 2012); and E15 (the Agland Inventory Reports for the Auxier Property for tax year 2013).

²⁹ See, E7:1.

³⁰ See, E7:1.

³¹ See, E7:1.

³² See, E7:1.

³³ The County Packets for all three tax years indicate that the County Assessor used a three year look back period. See, E4:3-4; E5:3-4; and E6:3-4.

Cole testified that his review of sales indicated that the both use and soil types were relevant in determining the actual value of agricultural property in Richardson County. He testified that cropland was more valuable than grass land and that soil types with higher capabilities were more valuable than soil types with lower capabilities.³⁴ He testified that the agricultural values in Richardson County had increased from 2011 to 2013 based upon increasing sales prices for agricultural property in the market. The County Board's submissions received into evidence by the Commission include the qualified sales used to assess the Subject Property, and all other agricultural property in Richardson County for tax years 2011, 2012, and 2013.³⁵ Cole testified that the road on the Subject Property was not assessed any value for any of the tax years in question.³⁶

Cole asserted that the Subject Property was not truly comparable to the Auxier Property. He testified that while the Subject Property had approximately 60 acres of dryland cropland in each year, the Auxier Property only had 38.5 acres of dryland cropland each year. Further, Cole asserted that the sale of the Auxier Property had not been qualified as an arm's length transaction by the County Assessor, and was not used to value real property in Richardson County. Cole testified that it was his opinion that the Auxier Property sale was not arm's length because it was a forced partition sale as part of an estate dispute, and because the grantor and grantee were related.

C. Analysis

The Commission finds that the County Assessor listed a road as a characteristic of the Subject Property, but did not assign value for assessment purposes to the road for any of the tax years in question.³⁷ Additionally, the County Assessor used a statutorily permissible method for determining the actual value of the Subject Property.³⁸ The Commission also finds that the County Assessor's conclusion that the use of the real property affects the value of agriculture

³⁴ See, E4:6-7 (LVG table 2011); E5:6-34 (Agland inventory reports containing the LVG values); E6:6-34 (Agland inventory reports containing the LVG values).

³⁵ See, E4:3-4; E5:3-4; and E6:3-4.

³⁶ See, E4:8; E5:6; and E6:6.

³⁷ See, E4:8; E5:6; and E6:6.

³⁸ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

property is supported by commonly accepted appraisal techniques and market data.³⁹ The Commission also finds that the Auxier Property and the Subject Property are meaningfully different and, therefore, not comparable.

The Auxier Property and the Subject Property are both 80 acre tracts of agricultural land, but the uses on the properties are meaningfully different. The Subject Property consisted of 59.50 acres of dryland in 2011 and 2013,⁴⁰ and 67.35 acres of dryland in 2012,⁴¹ while the Auxier Property had only 38.5 acres of dryland for all three years.⁴² The Auxier Property's remaining acres included 35.5 acres of grass land, 28 acres of which is classified as 4G by the County Assessor.⁴³ In contrast the Subject Property only had nine acres of grass land, none of which fell below 3G1.⁴⁴ The Commission also notes that nearly half of the Subject Property's dryland acres are classified as 1D or 1D1,⁴⁵ whereas only approximately a quarter of the Auxier Property's dryland acres have similar soil capabilities.⁴⁶

The Commission finds that there is not clear and convincing evidence that the County Board's determinations are unreasonable or arbitrary.

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."⁴⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴⁸ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

³⁹ The County Assessor examined qualified and relevant sales for all three tax years when forming this conclusion. See, E4:3-4; E5:3-4; and E6:3-4.

⁴⁰ See, E12 and E14.

⁴¹ See, E13.

⁴² See, E15-17.

⁴³ See, E15-17.

⁴⁴ See, E12-14.

⁴⁵ See, E12-14.

⁴⁶ See, E15-17.

⁴⁷ *Neb. Const.*, Art. VIII, §1.

⁴⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.⁴⁹ 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.⁵⁰ 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.⁵¹ 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.⁵² The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁵³ 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].⁵⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁵⁵ “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁵⁶

B. Summary of the Evidence

The Taxpayer generally asserted that the Subject Property and the Auxier Property should be valued the same for all three tax years. This may be interpreted as an assertion that the Subject Property should be equalized with the actual value of the Auxier Property. The principle of equalization requires that substantially similar properties must not be valued at materially different levels of value.⁵⁷ As previously stated, the Commission finds that the Subject Property and the Auxier Property are not comparable, because the properties have different uses and soil capabilities. The Commission finds that the Subject Property and the Auxier Property are also not substantially similar for purposes of equalization.

⁴⁹*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).

⁵⁰ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁵¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁵² *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).

⁵³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁵⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵⁵ *Id.* at 673, 94 N.W.2d at 50.

⁵⁶ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁵⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

The only other test for determining whether the Subject Property is equalized with other properties in the taxing district requires an analysis of the ratio of assessed to actual value of the Subject Property and comparable properties.⁵⁸ The County Assessor submitted several Agland Inventory Reports for real property adjacent to the Subject Property for all three tax years.⁵⁹ The Commission finds that the Agland Inventory Reports indicate that these properties were valued at the same material level in comparison to the Subject Property.

The Commission finds that there is not clear and convincing evidence that the valuations placed on the Subject Property are grossly excessive.

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. The Commission finds that there is not clear and convincing evidence that the valuations placed on the Subject Property are grossly excessive.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Richardson County Board of Equalization determining the value of the Subject Property for tax years 2011, 2012 and 2013 are affirmed.⁶⁰
2. The assessed value of the Subject Property for tax year 2011 is \$152,039.
3. The assessed value of the Subject Property for tax year 2012 is \$166,393.
4. The assessed value of the Subject Property for tax year 2013 is \$184,466.

⁵⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁵⁹ See, E4:8-36; E5:6-34; and E6:6-34.

⁶⁰ 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.

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Richardson County Treasurer and the Richardson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2011, 2012, and 2013.
9. This or Decision and Order der is effective for purposes of appeal on June 25, 2014.

Signed and Sealed: June 25, 2014

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.