

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Harold C. Joedeman,
Appellant,

v.

Logan County Board of Equalization,
Appellee.

Case No: 12A 014

Decision and Order Affirming the
Determination of Logan County Board of
Equalization

For the Appellant:

Harold C. Joedeman,
Pro Se.

For the Appellee:

Steven Vinton,
Logan County Attorney.

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

I. THE SUBJECT PROPERTY

The Subject Property is an agricultural parcel located in Logan County, Nebraska. The legal description of the Subject Property is found at Exhibit 2, page 1. The property record card for the Subject Property is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Logan County Assessor determined that the assessed value of the Subject Property was \$199,684 for tax year 2012. Harold C. Joedeman (the Taxpayer) protested this assessment to the Logan County Board of Equalization (the County Board) and requested an assessed valuation of \$195,177. The Logan County Board determined that the assessed value for tax year 2012 was \$199,684.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (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 June 6, 2013.

¹ E2.

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

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 *Bottofv. 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.”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

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

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 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.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

Harold C. Joedeman, the Taxpayer, asserted that the Subject Property was overvalued because the GIS system relied upon by the County Assessor to determine the number of acres on the Subject Property had erroneously assigned an extra 17 acres to the parcel. In support of this assertion, the Taxpayer provided: (1) a USDA map indicating that the Subject Property consisted of 479 acres;²⁰ (2) a Soil Conservation Service map indicating that the Subject Property consisted of 480 acres;²¹ (3) copies of abstracts;²² (4) copies of deeds going back to 1820;²³ and (5) copies of tax receipts.²⁴

The Taxpayer asserted that a survey would be the most accurate method for determining the actual area of the Subject Property. The Taxpayer did not have a survey completed for the

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).

²⁰ E12.

²¹ E21.

²² E13, E14, and E15.

²³ E16.

²⁴ E7.

Subject Property. He instead asserted that he relied on his deeds and abstracts. The Taxpayer asserted that he believed that surveys had been conducted at the time the deeds were created because survey poles were located on portions of the Subject Property at some point in the past.

The Taxpayer provided the Commission with photographs and soil maps for the Subject Property.²⁵ The Taxpayer testified that the Subject Property is comprised of soil types that are highly susceptible to erosion and low quality, and he asserted that topography prevents irrigation of the Subject Property. The Taxpayer also asserted that these factors should result in a lower taxable value for the Subject Property. The Taxpayer further asserted that the County Assessor values all grassland at \$315 an acre even though other properties with grassland had better soil qualities and could produce greater income.²⁶

Patricia Harvey, the Logan County Assessor since 1990, testified that a geographic information system (“GIS”) was used to correlate soil compositions and acres across the County for tax year 2012 purposes. Harvey testified that the Assessor’s Office used dot counting prior to implementing the use of GIS. She indicated that dot-counting is a labor intensive and less accurate method of determining land area as compared to GIS, and that use of GIS resulted in a net loss of 414 acres across Logan County. Harvey also testified that original maps produced in 1964 indicated that the Subject Property’s section was larger than most sections, and that in the past the County had incorrectly excluded some of the Taxpayer’s acres from taxation.

Harvey further testified that she determined the actual value of the Subject Property using a mass appraisal sales comparison approach. She determined that the value per acre was based upon values of soil types derived from known sales, and that the Subject Property has various quality soils including 3D, 3D1, 4D, 4D1, 4G, 3G1, 2G, and 2G1. She also testified that soil types were valued throughout Logan County at the same per acre value as derived by her appraisal system.

Dale Hanna, a GIS specialist and president of GIS Western Resources, Inc, testified that his company created GIS maps for Logan County by using estimated corners of the County derived from survey records. He testified that measurements for each section within Logan County used

²⁵ E21, E22, E23, and E24.

²⁶ The Taxpayer provided a document from the Logan County Assessor found at Exhibit 6 assigning a value of \$310 per acre for tax year 2010.

section corners as recorded in Unites States Geological Service (“USGS”) topographical maps, and that in some instances the section corners corresponded with fence rows or roads.

With respect to the Subject Property, Hanna testified that fence corners were located in close proximity to the section markers recorded on USGS topographical maps. Hanna also testified that he used GIS to derive the area of the Subject Property. This report is found in Exhibit 4, pages 12-34, and derived an area of 496 acres.

Hanna testified that GIS is not as accurate as a survey, but that it produces a reasonable estimate. He stated that the multiple counties in Nebraska use GIS to derive the area of agricultural property, and that while not as accurate as a survey, it generally results in minor differences. He testified that a survey would provide the most accurate calculation of the Subject Property’s area.

Hanna further testified that he visited the Subject Property to recalculate the area of the Subject Property using a global positioning system (“GPS”), in preparation for the hearing before the Commission. He explained that he did not use original section markers, but instead used fence posts. He testified that he physically stood at five of the six points used to determine the area of the Subject Property, recorded his longitude and latitude, and then used these points to determine the area within the fence. Hanna stated that he used all surveyor information available and began on the corner based on the longitude and latitude provided by a surveyor. Hanna testified that this calculation resulted in an area for the Subject Property of 498 acres. Additionally, Hanna reviewed an older Farm Service Administration (“FSA”) field boundary system that indicated the area of the Subject Property is 495 acres.

C. Analysis

The County Assessor relied upon the GIS derived number of acres for the Subject Property.²⁷ The Taxpayer’s evidence is relevant to the question of the area of the Subject Property. This evidence, however, only produces a different opinion of value. None of the satellite sources used to measure the Subject Property arrived at the same area, although some were very similar.²⁸

²⁷ E5.

²⁸ E12, E21, and E5:11.

Both parties agreed that the most definitive method for determining the actual area of the Subject Property is a survey. No survey was performed. The resolution of the correct area of the Subject Property is, therefore, contingent on which satellite imaging system (i.e., GIS or GPS) is more accurate. No evidence presented indicated that any one satellite imaging system was more accurate than the other.

The burden is on the Taxpayer to prove by clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.²⁹ Here the evidence only illustrates that the County Board and the Taxpayer arrived at different opinions. A difference of opinion is not sufficient to meet the statutory burden.³⁰ "A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion."³¹ A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.³² The evidence in this case indicates that reasonable minds disagree, and that the County Board did not act in disregard of facts or circumstances which would lead a reasonable person to a different conclusion. Therefore, the Commission finds that it is reasonable and not arbitrary for the County Assessor to rely on GIS derived area absent a more dependable form of measurement.

The Commission also finds that the County Assessor's sales comparison approach is a statutorily permissible method for determining the per acre value of the Subject Property³³ and is supported by commonly accepted appraisal techniques and market data.³⁴ Additionally, because the Taxpayer did not quantify the impact on the Subject Property's value stemming from factors such as topography, susceptibility to erosion and poor soil quality, the Commission further finds that there is not clear and convincing evidence that the County Board's determination is unreasonable or arbitrary.

²⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

³⁰ *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

³¹ *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

³² See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

³³ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

³⁴ The evidence indicates that the County Assessor examined qualified and relevant sales in determining per acre values. See, E5.

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 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 Logan County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.³⁵
2. The taxable value of the Subject Property for tax year 2012 is \$199,684.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Logan County Treasurer and the Logan 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 2012.

³⁵ 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 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 (2010 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.