

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Don L. Bauermeister,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case No: 14A 004

Decision and Order Reversing the
Decision of the Madison County
Board of Equalization

For the Appellant:

Don L. Bauermeister,
Pro Se

For the Appellee:

Joe Smith,
Madison County Attorney

I. THE SUBJECT PROPERTY

The Subject Property is a 317.67 acre parcel located in Madison County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Madison County Assessor determined that the assessed value of the Subject Property was \$491,056 for tax year 2014.¹ Don L. Bauermeister (the Taxpayer) protested this assessment to the Madison County Board of Equalization (the County Board) and requested an assessed valuation of \$410,672.² The County Board determined that the taxable value for tax year 2014 was \$491,056.³

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a Single Commissioner hearing at 10 o'clock a.m. on August 17, 2015, at the Holiday Inn Express & Suites, 920 S. 20th Street, Norfolk, Nebraska. Commissioner Thomas D. Freimuth was the Commissioner participating in

¹ Exhibit 1.

² *Id.*

³ (E1)

the hearing. Subsequent to the hearing on August 17, 2015, and prior to the issuance of a Decision and Order by the Commission, Commissioner Freimuth resigned from the Commission.

On September 17, 2015, Commissioners Robert W. Hotz and Nancy J. Salmon held a hearing. The Commission advised that as a result of the resignation of Commissioner Freimuth, the Commission lacked a majority of Commissioners present to issue a Decision and Order and that the proceedings of August 17, 2015 would be vacated and that the matter would be set for a new hearing.⁴ Commissioners Robert W. Hotz and Nancy J. Salmon participated in the hearing on January 12, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is *de novo*.⁵ 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."⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

⁴ See, Neb. Rev. Stat. §77-5016(13) (2014 Cum. Supp.), "The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted."

⁵ See, Neb. Rev. Stat. §77-5016(8) (2014 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).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ 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.¹¹

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.”¹² 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.”¹³ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

IV. VALUATION

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.¹⁵

“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.”¹⁶ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁷ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

and has the same meaning as assessed value.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

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.²¹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²²

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.²³

V. EQUALIZATION

“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.”²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²² Neb. Rev. Stat. §77-132 (Reissue 2009).

²³ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²⁴ *Neb. Const.*, Art. VIII, §1.

²⁵ *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.²⁶ 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.²⁷ 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.²⁸ 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.²⁹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁰ 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].”³¹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³²

VI. SUMMARY OF THE EVIDENCE

Donald Bauermeister testified to his opinion that his property was overvalued and that the sales used by the County Assessor were not comparable properties. He asserted that approximately six acres of the property were fenced off from grazing because the fine sandy soil was especially susceptible to blowouts. Bauermeister testified that these acres should be assessed as waste rather than as grassland.

Bauermeister also disputed the properties used by the County Board as comparables. He asserted that the properties were too far away from the Subject Property to be considered comparable. However, he conceded that all of the comparables were located in Madison County and each was located no more than 8 miles from the Subject Property.

²⁶ *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).

²⁷ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *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).

³⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³² *Id.* at 673, 94 N.W.2d at 50.

Jeff Hackerott, the Madison County Assessor, testified on behalf of the County Board. Hackerott asserted that there is not much grassland in Madison County and therefore few sales of grassland in the three years prior to the effective date of January 1, 2014. He also stated that all of the agricultural land and horticultural land in Madison County is in one market area, and that all of the grassland sales that he used as comparables were therefore from the same market area as the Subject Property.

During testimony, Hackerott agreed with Bauermeister's claim that 6.33 acres should have been assessed as waste land rather than as grassland. Prior to the hearing, Hackerott prepared a revision of the property record card showing these changes.³³ As a result, Hackerott gave an opinion of value of the Subject Property for tax year 2014 in the amount of \$482,795. The Commission finds Bauermeister's testimony and Hackerott's opinion to be persuasive regarding the change of 6.33 acres from grassland to waste land.

VII. 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 clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.³⁴

For all of the reasons set forth above, the decision of the County Board should be reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Madison County Board of Equalization determining the value of the Subject Property for tax year 2014 is reversed.
2. The taxable value of the Subject Property for tax year 2014 is \$482,795.

³³ Exhibit 22.

³⁴ Taxable 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.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Madison County Treasurer and the Madison County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2014.
7. This Decision and Order is effective for purposes of appeal on January 13, 2016.

Signed and Sealed: January 13, 2016

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 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.