

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael Hanus
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 13A 146 & 14A 196

Decision and Order Reversing the Decisions
of the Douglas County
Board of Equalization

For the Appellant:
Michael Hanus,
Pro Se

For the Appellee:
Shakil A. Malik
Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 20 acre parcel located in Douglas County, Nebraska. The legal description of the Subject Property is found in the Case File. The property record card for the Subject Property is found at Exhibits 3 and 4.

II. PROCEDURAL HISTORY

For tax year 2013, the Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$154,440.¹ Michael Hanus (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$117,460.² The County Board determined that the taxable value for tax year 2013 was \$154,440.³

The County Assessor determined that the assessed value of the Subject Property was \$164,910 for tax year 2014.⁴ The Taxpayer protested this assessment to the County Board and

¹ Exhibit 1.

² Exhibit 3:16.

³ Exhibit 1.

⁴ Exhibit 2.

requested an assessed valuation of \$126,834.⁵ The County Board determined that the taxable value for tax year 2013 was \$164,910.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (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 consolidated hearing on August 17, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is *de novo*.⁷ 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."⁸

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.⁹

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.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

⁵ Exhibit 4:20.

⁶ Exhibit 2.

⁷ 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).

⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁹ *Id.*

¹⁰ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

¹¹ *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.¹² 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.¹³

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.”¹⁴ 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.”¹⁵ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁶

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.¹⁷

“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.”¹⁸ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁹ Taxable value is the

¹² 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).

¹³ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁴ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.²⁰ All real property in Nebraska subject to taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²²

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.²³

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²⁴

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.²⁵

B. Summary of the Evidence

Michael and Cathy Hanus both testified on behalf of the Taxpayer. The Taxpayer summarized two primary assertions: that the classifications of some of the agricultural acres on the parcel were incorrect, and that the building site values were too high.

Stan Mlotek, a licensed appraiser and employee of the County Assessor, testified on behalf of the County Board. Mlotek inspected the Subject Property in 2015. He testified that he walked the acreage and visually noted the uses of the land. Mlotek testified that once he returned to his office, he used an aerial map to make acreage determinations.

Both parties agreed that there were changes in the use of some of the land from 2012 to 2015. According to Mlotek, a Farm Services Agency (FSA) map from 2012 showed more dryland than he observed in 2015. Based upon his inspection of the property in 2015, Mlotek determined that

²⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

²¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁵ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

the property record card for tax years 2013 and 2014 should be corrected because of the changes of the uses of the land. Where the record card showed 8.9 acres of dryland, Mlotek testified the record card should have shown the dryland acre area at 2.93 acres. Where the record card showed 1.38 acres of grassland, Mlotek testified the record card should have shown the grassland acre area at 7.35 acres.

Regarding the area that was classified timber, the parties sharply disagreed. The Taxpayer asserted that rows of trees on two borders of the acreage should have been included in the acre total. Mlotek testified that one of the rows of trees was actually on the road right of way that was assessed at \$0. Mlotek and the Taxpayer also disagreed regarding how the definition of timberland should be applied in relation to the trees and grasses on the Subject Property.²⁶ Mlotek testified to his agreement with the property record card showing 6.72 acres of treed acres. The Taxpayer provided testimony and photographs regarding the treed acres, but did not quantify the area of timberland other than to assert that it was more than 6.72 acres.

The Commission has reviewed the record and finds that the testimony regarding changes in the uses of the land is persuasive. Therefore, the Commission finds that the actual value of the Subject Property for both tax years should reflect those changes as discussed above.

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.”²⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁸ 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.²⁹ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to

²⁶ “Timberland and Forestland is land which is wooded by nature or humans and consisting of a dense growth of trees and underbrush such that it is not suitable for grazing.” 350 Neb. Admin. Code, ch. 14 §002.29.

²⁷ *Neb. Const.*, Art. VIII, §1.

²⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁹ *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).

market value for both the Subject Property and comparable property is required.³⁰ 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.³¹ 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.³² The constitutional requirement of uniformity in taxation extends to both rate and valuation.³³ 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].”³⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁵

B. Summary of the Evidence

Concerning the Taxpayer’s assertion that the actual value of the home site³⁶ was excessive at \$25,000, the Taxpayer provided property record cards for three alleged comparable parcels.³⁷ However, each of these properties was not classified or assessed as a home site. As such, the Commission has no basis to make an equalization comparison between the alleged comparable properties and the Subject Property. No other evidence was adduced to support the assertion that the Subject Property site acres were overassessed.

VI. 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.

³⁰ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³² *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).

³³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁵ *Id.* at 673, 94 N.W.2d at 50.

³⁶ “Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision.” Neb. Rev. Stat. §77-1359(3).

³⁷ See, Exhibits 5, 6, and 8.

For all of the reasons set forth above, the decisions by the County Board for both tax years 2013 and 2014 should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2013 and 2014 are vacated and reversed.³⁸
2. The taxable value of the Subject Property is as follows:

Tax Year 2013	Land	\$ 64,700
	<u>Improvements</u>	<u>\$ 77,800</u>
	Total	\$142,500

Tax Year 2014	Land	\$ 75,466
	<u>Improvements</u>	<u>\$ 77,800</u>
	Total	\$153,266

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas 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 years 2013 and 2014.

³⁸ 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.

7. This Decision and Order is effective for purposes of appeal on August 23, 2016.³⁹

Signed and Sealed: August 23, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁹ 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.