

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thornhill's Circle T Ranch, LLC,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case Nos: 15A 0003, 15A 0004, 15A 0005
& 15A 0006

Decision and Order Affirming the Decisions
of the Sheridan County Board of
Equalization

For the Appellant:

Jon P. Worthman,
Attorney for Appellant

For the Appellee:

Jamian J. Simmons,
Sheridan County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property consists of four distinct agricultural parcels located in Sheridan County, Nebraska. The legal description of the Subject Property is found at Exhibits 1-4. The property record card for the Subject Property is found at Exhibits 5:1, 5:6, 6:1, and 7:1.

II. PROCEDURAL HISTORY

The Sheridan County Assessor (“the County Assessor”) determined that the assessed value of the Subject Property in 15A 0003 was \$92,170 for tax year 2015. Thornhill's Circle T Ranch, LLC (“the Taxpayer”) protested this assessment to the Sheridan County Board of Equalization (“the County Board”) and requested an assessed valuation of \$65,176. The County Board determined that the taxable value for tax year 2015 was \$92,170.¹

The County Assessor determined that the assessed value of the Subject Property in case 15A 0004 was \$101,048 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$52,800. The County Board determined that the taxable value for tax year 2015 was \$101,048.²

¹ Exhibit 1.

² Exhibit 2.

The County Assessor determined that the assessed value of the Subject Property in case 15A 0005 was \$107,160 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$77,547. The County Board determined that the taxable value for tax year 2015 was \$107,160.³

The County Assessor determined that the assessed value of the Subject Property in case 15A 0006 was \$16,778 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$14,546. The County Board determined that the taxable value for tax year 2015 was \$16,778.⁴

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 as ordered by the Commission. The Commission held a hearing on July 7, 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

³ Exhibit 3.

⁴ Exhibit 4.

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.*

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

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

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.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

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).

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).

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 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.²¹

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.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.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

B. Summary of the Evidence

The Taxpayer did not disagree with the correctness of the property record cards of the Subject Property. The Taxpayer argued, but presented no direct evidence, that the methodology used to value the Subject Property was flawed. Therefore, there was not any evidence presented to dispute the valuations of the Subject Property.

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).

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. §77-201 (2) (Reissue 2009).

²² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

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

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

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.”²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ 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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³¹ 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].”³² “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³³

B. Summary of the Evidence

The Taxpayer argued that the taxable values of the Subject Property were arbitrary or unreasonable because they were based upon a flawed formula. The Taxpayer argued further that

²⁵ *Neb. Const.*, Art. VIII, §1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁷ *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).

²⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁰ *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).

³¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³³ *Id.* at 673, 94 N.W.2d at 50.

the Property used as comparables by the County Board were not actually comparable to the Subject Property.

The County Board argued that the formula used to determine the taxable value of the Subject Property was correct according to Nebraska Law. The County Board asserted that the sales study was used to determine the values of similar properties and to obtain a market rate. The County Board further argued that the market rate was then applied to comparable land and adjusted to assessed value. The County Board also argued that the comparable properties located in Exhibits 9 to 15 were in fact comparable when looking at the land capability groups (“LCG’s”) of each property.³⁴

The Commission has reviewed the property record cards of the Subject Property and the alleged comparable properties.³⁵ The property record cards in the record indicate that each property was assessed uniformly, in that the same LCG’s were valued at the same amount per acre.³⁶ The Commission has found no evidence that the alleged comparable properties in the record are not comparable to the Subject Property.

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.

For all of the reasons set forth above, the appeals of the determinations of the County Board should be affirmed.

³⁴ Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification. Title 350 NAC, Ch. 14, §002.41.

³⁵ Exhibits 9 to 15.

³⁶ The record was unclear as to why the Subject Property in case 15A 0004 had LCG values lower than the LCG values in the other Subject Property and the comparables. Since the Taxpayer received a lower LCG amount than the other properties, there is no basis for an equalization argument in this case.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sheridan County Board of Equalization determining the taxable values of the Subject Property for tax year 2015 are affirmed.
2. The taxable values of the Subject Property for tax year 2015 are:

15A 003	\$ 92,170
15A 004	\$101,048
15A 005	\$107,160
15A 006	\$ 16,778
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sheridan County Treasurer and the Sheridan 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 2015.
7. This Decision and Order is effective for purposes of appeal on July 27, 2016.³⁷

Signed and Sealed: July 27, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁷ 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.