

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard R. Green Living Trust,
Gerald W. Green, Trustee,
Appellant,

v.

Morrill County Board of Equalization,
Appellee.

Case No: 15A 0035 & 15A 0036

Decision and Order Affirming Morrill
County Board of Equalization

For the Appellant:

Gerald W. Green, Trustee,
Richard R. Green Living Trust

For the Appellee:

Travis R. Rodak,
Morrill County Attorney

The appeal was heard before Commissioners Steven Keetle and Nancy Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is made up of two agricultural and horticultural parcels totaling approximately 888.14 acres located in Morrill County, Nebraska. The legal description of the Subject Property is found at Exhibits 1 and 2. The property record cards for the Subject Property are found at Exhibit 3 pages 39-69.

II. PROCEDURAL HISTORY

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 15A-035 was \$96,600 for tax year 2015. Richard R. Green Living Trust (the Taxpayer) protested this assessment to the Morrill County Board of Equalization (the County Board) and requested an assessed valuation of \$28,808. The Morrill County Board determined that the assessed value for tax year 2015 was \$96,600.¹

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 15A-036 was \$169,515 for tax year 2015. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$60,037. The Morrill County Board determined that the assessed value for tax year 2015 was \$169,515.²

¹ Exhibit 1.

² Exhibit 2.

The Taxpayer appealed the decisions 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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of some of the exchanged exhibits. The Commission held a hearing on July 21, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

³ 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

⁷ *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.⁸ 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.⁹

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.”¹⁰ 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.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

IV. VALUATION 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.¹³

“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.”¹⁴ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁵ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes

⁸ 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).

⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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

¹¹ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

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.¹⁹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²⁰

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.

V. EQUALIZATION 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.”²¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-132 (Reissue 2009).

²¹ *Neb. Const.*, Art. VIII, §1.

²² *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.²³ 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.²⁴ 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.²⁵ 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.²⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁷ 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].”²⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁹

VI. SUMMARY OF THE EVIDENCE

In Nebraska agricultural land and horticultural land classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture as converted into land capability groups (LCG) by the Property Tax Administrator.³⁰ County assessors are required to utilize these LCGs as directed by the Property Tax Administrator.³¹ The Property Tax Administrator has adopted and promulgated Rules and Regulations to carry out her duties pertaining to the classification of agricultural and horticultural land by LCGs.³² These rules and regulations state that the conversion legend for all LCGs is prepared by the Department of Revenue, Property Assessment Division according to the dryland capability classification of each

²³ *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).

²⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁶ *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).

²⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁹ *Id.* at 673, 94 N.W.2d at 50.

³⁰ See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), the Property Tax Administrator is the chief administrative officer of the property assessment division of the Department of Revenue, see Neb. Rev. Stat. 77-701 (2014 Cum. Supp.).

³¹ See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.).

³² See, Title 350 Neb. Admin. Code ch. 14 (3/09).

soil that shows, in a general way, the suitability of each soil for most kinds of field crops.³³ This conversion legend shows the LCGs for each soil in a county whether in grassland, dryland or irrigated cropland.³⁴ For grassland the LCGs 1G1, 1G, 2G1, 2G, 3G1, 3G, 4G1, and 4G should generally progress from very high yields of forage to very low yields of forage.³⁵

The Taxpayer presented an array of the LCG assignments for the grassland soil types present in Morrill County determined by the Property Assessment Division of the Department of Revenue compared to the NRCS range production ratings which demonstrates that, for Morrill County soil types classified as grassland, the LCGs do not progress from very high yields of forage to very low yields of forage indicated by the NRCS range production ratings.³⁶ The Taxpayer alleges that these LCGs established by the Property Assessment Division of the Nebraska Department of Revenue for grassland classification do not meet the requirements of the Nebraska Administrative Code and do not result in assessments that are uniform and proportionate.

The Taxpayer suggests two alternative methods of valuing the Subject Property. The first being described as a modified valuation approach using sales data and extrapolating, and the second as a valuation approach based on the Income Approach.

The Taxpayer's modified valuation approach utilized 14 sales of parcels containing grassland from throughout Morrill County.³⁷ The Taxpayer, rather than using the LCGs as determined by the Property Tax Administrator under the Administrative Code, categorized the grassland sales in Morrill County by soil code.³⁸ The Taxpayer then utilized the production capability ratings determined by the NRCS to determine the total annual forage capability for these 14 grassland sales in Morrill County.³⁹ The Taxpayer determined the average sales price per pound of forage capability for each of the 14 sales and the average sales price per pound of forage for all 14 sales.⁴⁰ The Taxpayer utilized this data to extrapolate values for each soil symbol based on the sole criteria of capability of production of forage.⁴¹ Real estate appraisal principles hold that "Simply averaging the results of the adjustment process to develop an averaged value fails to

³³ Title 350 Neb. Admin. Code ch 14, §004.08B (3/09).

³⁴ Title 350 Neb. Admin. Code ch 14, §004.08B (3/09).

³⁵ See, Title 350 Neb. Admin. Code ch 14, §§004.08H(9)-004.08H(16) (3/09).

³⁶ See, E4:18

³⁷ E4:23 (Table).

³⁸ E4:93-121

³⁹ E4:93-121

⁴⁰ E4:25-26, these values are also referred to by their Animal Units per acre or AUM measurement.

⁴¹ E4:30.

recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”⁴² The Taxpayer’s first method does not make any adjustments to the values for any factor other than capability of production of forage.

The Taxpayer’s second method, a valuation approach based on the Income Approach, utilized the annual production of forage capabilities as determined in the Taxpayer’s first method, average rent values and income rates from the Nebraska Farm Real Estate Market Highlights 2014-2015 report, and the actual expenses of the Subject Properties to determine value.⁴³ The Taxpayer offered no information regarding actual or market rental rates for grassland in Morrill County. The Taxpayer testified that the Subject Property is only leased out at a rate sufficient to cover the property taxes on the Subject Property. Additionally the Taxpayer offered no evidence of market expenses for Morrill County, only the actual expenses for the Subject Property. Professionally accepted mass appraisal methodology holds that “[b]ecause it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect typical management and smoothed or stabilized across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.”⁴⁴ “For properties with reported figures the assessor has two choices: (1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases.”⁴⁵ “Taxpayers generally treat property taxes as fixed expenses. IAAO generally advocates that they be treated as a component of the capitalization rate, because they are based largely on the assessor’s determination of market value. Thus, they are not recognized as an allowable expense; instead the capitalization rate is increased by the estimated effective tax rate.”⁴⁶

⁴² Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008)

⁴³ “Due to the inherent limitations of this survey, some of which are listed above, information in this report should not be used to set a specific rental rate or value a particular parcel of real property for sale or property taxes, security for a loan, and other related legal matters.” *Nebraska Farm Real Estate Market Highlights 2014-2015*, by Jim Jansen, Roger Wilson (2015) University of Nebraska-Lincoln, Agricultural Economics Department, p iii.

⁴⁴ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

⁴⁵ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 341 (2011).

⁴⁶ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

The Assessor testified that she valued the Subject Property in the same way that she valued all agricultural and horticultural property in Morrill County, and that this valuation followed the requirements of law imposed upon her. The Assessor testified that she looked at all sales, not just sales containing only grassland, to determine the assessed values for agricultural and horticultural land values in all classes, irrigated, dryland and grassland. The Assessor testified that in addition to sales from Morrill County she used sales of comparable properties outside Morrill County to determine the accuracy of property values for tax year 2015. Specifically when looking at rough rocky ridge areas like the Subject Property the Assessor looked at sales in Market Area 2 of Morrill County, sales in Scotts Bluff County, sales in Sioux County, and sales in Garden County. The Assessor testified that there were no sales of properties with the same soil types as those on the Subject Property so she utilized her training and experience along with the sales information pertaining to similar rough rocky ridge areas to determine the assessed values for the Subject Property. The Assessor testified that sales of rough rocky ridge areas in and around Morrill County were influenced by factors other than productivity.

Both the Taxpayer and the Assessor acknowledge that there are no sales of properties with similar soil types and topography as the Subject Property in Morrill County. Both the Taxpayer and the Assessor are forced to use theoretical methods to determine values for properties of similar soil types and topography. Nebraska Courts have recognized that in cases where there is no sale of like property, actual or market value must be arrived at by theoretical methods commonly used by appraisers qualified in the particular field.⁴⁷ The appraisal of real estate is not an exact science.⁴⁸ The LCGs utilized by the Assessor as required by the Rules and Regulations of the Department of Revenue for grassland in Morrill County appear to be flawed, however, both the Taxpayer and the Assessor allege that their valuations take this into account when determining values. The Taxpayer's analysis focused on a single factor, production of forage, as the basis for his entire analysis. The Assessor, while acknowledging that production of forage is a factor to be considered when valuing grassland, testified that the sales she utilized indicated that there were other factors at work in the market beyond production of forage alone. The Commission finds that while the Taxpayer has demonstrated that there is a flaw in the LCGs classified as grassland determined by the Property Assessment Division of the Nebraska

⁴⁷ See, *Lincoln Tel. and Tel. Co. v. York County Bd. of Equal.*, 209 Neb. 465, 476, 308 N.W.2d 515, 522 (1981).

⁴⁸ *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

Department of Revenue, the Taxpayer has failed to demonstrate that this flaw has resulted in assessed value determinations that are incorrect or grossly excessive and the result of systematic will or failure of a plain legal duty. In an appeal “the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.”⁴⁹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁵⁰ The Taxpayer did not 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].”⁵¹

VII. 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 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 determination of the County Board should be Affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Morrill County Board of Equalization determining the value of the Subject Property for tax year 2015 is Affirmed.⁵²
2. The assessed value of the Subject Property for tax year 2015 is:
Case No. 15A-035: \$96,600

⁴⁹ JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting Brenner v. Banner County Bd. Of Equal., 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).
⁵⁰ *Id.* at 673, 94 N.W.2d at 50.

⁵¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵² 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.

Case No. 15A-036: \$60,037

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Morrill County Treasurer and the Morrill 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 October 14, 2016.

Signed and Sealed: October 14, 2016.

Steven A. Keetle, 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.), other provisions of Nebraska Statute and Court Rules.