

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Larry Stuckey,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 15A 0017

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

**For the Appellant:**

Larry Stuckey,  
Pro Se

**For the Appellee:**

John R. Palmtag,  
Deputy Otoe County Attorney

The appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 79.2 acre agricultural parcel located in Otoe 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 2, pages 19-21.

**II. PROCEDURAL HISTORY**

The Otoe County Assessor determined that the assessed value of the Subject Property was \$261,200 for tax year 2015. Larry Stuckey (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested a valuation of \$186,157. The County Board determined that the taxable value for tax year 2015 was \$261,200.<sup>1</sup>

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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on October 11, 2016.

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<sup>1</sup> Exhibit 1.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup> 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."<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>9</sup> 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.”<sup>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### 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.<sup>12</sup>

“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.”<sup>13</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>14</sup> 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.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>17</sup>

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.

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<sup>9</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>14</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>18</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>19</sup>

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.<sup>20</sup>

## 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.”<sup>21</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>27</sup> 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

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<sup>18</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>21</sup> *Neb. Const.*, Art. VIII, §1.

<sup>22</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>23</sup> *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).

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

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

<sup>26</sup> *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).

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

error of judgment [sic].”<sup>28</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>29</sup>

## VI. SUMMARY OF THE EVIDENCE

Therese Gruber, the Otoe County Assessor, testified on behalf of the County Board. Gruber testified that she utilized the sales comparison approach to value the Subject Property for tax year 2015. She stated that arm’s length sales of approximately 110 agricultural parcels that sold between October 1, 2011 and September 30, 2014 were analyzed from market area 8000. Gruber stated that soil types were identified and each soil type was assessed with the same per acre value within the market area. The Commission has reviewed all of the property record cards received in evidence and finds that the soil types within the Subject Property were assessed at the same per acre value as the same soil types within the comparable properties.

Larry Stuckey testified that he purchased the Subject Property December 10, 2014 for \$262,193. He said that he and his son owned two other adjacent parcels and his son wanted to purchase the Subject Property. He asserted that the Subject Property had not had the benefit of good stewardship prior to the purchase; undesirable trees were overgrown, terraces were in disrepair, and the soil fertility was very poor. Stuckey also testified that the Subject Property was negatively influenced by poor maintenance of a minimum maintenance county road at the Southwest corner of the property. He provided photographs of the road which showed extreme washouts and testified that the road was not passable with certain equipment needed to farm the row crops grown on the Subject Property.<sup>30</sup> He testified specifically that the condition of the road had deteriorated significantly since January 1, 2015. He did not quantify what amount he believed should be deducted from the assessed value of the Subject Property to offset the poor quality roadway.

Stuckey also testified as to commodity prices for each of the last five years. He asserted that the assessed value of the Subject Property did not follow the highs and lows of the commodity prices.

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

<sup>29</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>30</sup> See, Exhibit 4.

Therese Gruber testified that there were no sales in Otoe County to indicate a negative influence of poor road maintenance on the sales prices of agricultural land. She also stated that assessment levels were not directly correlated to commodity prices, but rather were based upon the sale prices of agricultural properties.

The Commission finds that the Taxpayer has not produced clear and convincing evidence that the assessment levels of the Subject Property should be reduced due to the condition of the county road adjacent to the property.

## **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 Otoe County Board of Equalization determining the value of the Subject Property for tax year 2015 is affirmed.<sup>31</sup>
2. The taxable value of the Subject Property for tax year 2015 is \$261,200.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe 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.

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<sup>31</sup> 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 October 12, 2016.<sup>32</sup>

Signed and Sealed: October 12, 2016.

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Robert W. Hotz, Commissioner

SEAL

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Steven A. Keetle, Commissioner

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<sup>32</sup> 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.