

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

Gregg D. Lambrecht,  
Appellant,

v.

Pierce County Board of Equalization,  
Appellee.

Case No: 15A 0002

Decision and Order

**For the Appellant:**  
Gregg D. Lambrecht,  
Pro Se

**For the Appellee:**  
Verlyn Luebbe,  
Pierce County Attorney

The appeal was heard before Commissioners Keetle and Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 320 acre agricultural land parcel located in Pierce 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 page 7.

**II. PROCEDURAL HISTORY**

The Pierce County Assessor determined that the assessed value of the Subject Property was \$1,077,250 for tax year 2015. Gregg D. Lambrecht (the Taxpayer) protested this assessment to the Pierce County Board of Equalization (the County Board) and requested an assessed valuation of \$724,008.30. The Pierce County Board determined that the assessed value for tax year 2015 was \$1,055,455.<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. The Commission received evidence and heard argument at a hearing held on June 28, 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

##### 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.<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

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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).

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.<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. 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.<sup>20</sup>

## **B. Summary of the Evidence**

The Taxpayer first alleges that the number of acres of the Subject Property which are assessed as irrigated acres are incorrect. The Taxpayer testified that the number of acres of the Subject Property certified as irrigated by the Natural Resources District (NRD) was 233.28 at the time the Taxpayer purchased the property at a public auction. This 233.28 acres is the same number of acres that the Assessor was informed were certified as irrigated by the NRD.<sup>21</sup> The Taxpayer testified that the end gun, which irrigates beyond the end of the pivot is operational on the north pivot but was removed from the south pivot for the 2015 tax year. The Taxpayer was unable to testify to the number of acres of the Subject Property which were actually irrigated by his tenants who farm the Subject Property.

The Assessor testified that she inspected the Subject Property and utilized aerial imagery to determine the amount of acres actually irrigated based on the Taxpayer’s assertion that the pivots covered approximately 233 acres of the Subject Property as reflected in the NRD certified irrigated acres. After the Taxpayer protested the assessment of the Subject Property to the County Board the Assessor re-examined the aerial imagery and determined that there was a

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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> E2:78

circle of irrigated cropland appearing on the imagery around the 233 acres covered by the pivots. Measuring this area from the GIS aerial imagery the Assessor determined that there were 242.95 acres being utilized as irrigated cropland on the subject property and reduced the number of irrigated acres on the Subject Property from 250.49 to 242.95.<sup>22</sup> The County Board adopted an assessed valuation based upon this revised number of irrigated acres at the protest for tax year 2015.<sup>23</sup>

The Taxpayer has failed to present clear and convincing evidence that the County's determination of the number of acres assessed as irrigated acres was unreasonable or arbitrary.

The Taxpayer asserted that the Subject Property should be assessed at the last sale price of the Subject Property or in the alternative at the 2014 assessed value adjusted upward 13% to account for the general increase in the value of irrigated cropland in Pierce County from tax year 2014 to 2015. The Taxpayer purchased the Subject Property in November of 2013 for \$1,019,730.<sup>24</sup> The Taxpayer testified that he purchased the Subject Property at a public auction attended by several bidders and that therefore the purchase price should be the actual value of the Subject Property. The Taxpayer further alleged that the value of the Subject Property was reduced by the fact that there is only one well to provide water for two pivots rather than a well for each pivot and because of the quality of the soils on the Subject Property.

The Assessor testified that she determined the per acre values for agricultural and horticultural land based on the Land Valuation Groups assigned to the different soil types in her county and recent sales of agricultural and horticultural land in Pierce County. The Assessor also testified that she attempted to balance the sales of agricultural and horticultural land by year and by use (i.e. irrigated, dry, grass) when determining the assessed value per acre for each LVG in the county. The Assessor testified that there are several parcels in Pierce County that utilize one well for multiple pivots and because there hasn't been an indication that this has an impact on sales prices per acre she doesn't make an adjustment to the assessed value per acre of land of this type of land in Pierce County. The County offered four recent comparable sales of agricultural and horticultural land in Pierce County to support its determination of the per acre

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<sup>22</sup> Exh. 2 pages 10-13.

<sup>23</sup> Exh. 1

<sup>24</sup> Exh. 2 page 10.

values for each Land Valuation Group in Pierce County, including the sale of a parcel of land directly adjacent to the Subject Property.<sup>25</sup>

“It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”<sup>26</sup> “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”<sup>27</sup>

## V. 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.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Pierce County Board of Equalization determining the value of the Subject Property for tax year 2015 is affirmed.<sup>28</sup>
2. The assessed value of the Subject Property for tax year 2015 is:

Land: \$1,055,455

Total: \$1,055,455

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<sup>25</sup> Exh. 8 pages 58-77.

<sup>26</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998)

<sup>27</sup> *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

<sup>28</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.

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

Signed and Sealed: September 14, 2016

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Steven A. Keetle, Commissioner

SEAL

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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.