

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

Donald E. Kubicek,  
Appellant,

v.

Saline County Board of Equalization,  
Appellee.

Case No: 14A 030

Decision and Order Affirming  
the Decision of the Saline County Board of  
Equalization

**For the Appellant:**  
Donald E. Kubicek,  
Pro Se

**For the Appellee:**  
Tad Eickman,  
Saline County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property is a 239.95 acre agricultural parcel improved with a vacant dwelling and outbuildings located in Saline 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 2:46-48.

**II. PROCEDURAL HISTORY**

The Saline County Assessor determined that the assessed value of the Subject Property was \$631,710 for tax year 2014. Donald E. Kubicek (the Taxpayer) protested this assessment to the Saline County Board of Equalization (the County Board) and requested an assessed valuation of \$459,625. The Saline County Board determined that the assessed value for tax year 2014 was \$597,250.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a hearing on December 22, 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.”<sup>20</sup>

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

At the hearing, the Taxpayer alleged that his property was overvalued due to the inaccurate use of soil type classifications to determine value. He alleged the soil types used were generic and were not tied to the productivity of the soil. He testified that his property contains sandy loam. He questioned who actually collected the soil samples and how the productivity of the soil types was gauged. He alleged that without this information, the County Board’s value was incorrect. However, the Taxpayer did not introduce evidence that demonstrated that the soil classifications were inaccurate or wrong.

Brandi Kelly, the Saline County Assessor, testified on behalf of the County Board. She testified that the soil types used in the valuation of the Taxpayer’s property were supplied by the Property Tax Administrator of the Nebraska Department of Revenue. She also stated that the property was valued using the sales comparison approach and that 23 sales were used to set market area values. She testified that the value set by the County Board was correct.

The Commission is authorized by statute to consider and utilize publications included in the Commission’s rules and regulations without taking notice on the record.<sup>21</sup> Specifically, the Commission may consider and utilize the soil surveys for each of the 93 counties of the State of

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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> See, Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.).

Nebraska as published by the United States Department of Agriculture or its subdivisions and the Reports and Opinions of the Property Tax Administrator.<sup>22</sup>

The County Board also provided the Commission with the Property Tax Administrator's soil conversion chart which translates the soil types into Land Capability Groups (LCGs).<sup>23</sup> The Commission has reviewed the soil conversion chart, the LCGs, the soil surveys for Saline County, and the Reports of the Property Tax Administrator, and determines that the County Assessor assigned the soil types on the Subject Property the LCGs as directed by the Property Tax Administrator's soil conversion chart.

Other than the Taxpayer's general assertions, there is no direct evidence that the Property Tax Administrator's soil conversion chart assigned inappropriate LCGs to the soil types. The Commission also notes that none of the Subject Property's soil types are assigned high capability LCGs and that most of the soil found on the Subject Property is assigned an LCG in the lower half of the capability classifications.

The Taxpayer's second argument is that the percentage increase over the previous year in both value and taxes was too high. However, this argument is also without merit. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>24</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>25</sup>

The Taxpayer did not quantify a convincing opinion of the actual value of the Subject Property, and an examination of the rest of the evidence in the case indicates that there is not clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.

The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

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<sup>22</sup> See, 442 Neb. Admin. Code, ch. 5 §031.02 (06/06/11).

<sup>23</sup> Exhibit 2:59-63. See also, Title 350 NAC Ch. 14, §002.41, defining Land Capability Groups as "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."

<sup>24</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>25</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable, and the decision of the County Board should be affirmed.

## **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 Saline County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$597,250.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Saline County Treasurer and the Saline 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 2014.

7. This Decision and Order is effective for purposes of appeal on January 12, 2017.

Signed and Sealed: January 12, 2017.

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Robert W. Hotz, Commissioner

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Steven A. Keetle, Commissioner

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.