

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

Woodman Partnership Trust,  
Jack D. Woodman, Trustee,  
Appellant,

v.

Adams County Board of Equalization,  
Appellee.

Case Nos: 15A 222 & 16A 161

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

**For the Appellant:**

Jack Woodman, Co-Trustee,  
Pro Se

**For the Appellee:**

David A. Bergin,  
Deputy Adams County Attorney

These appeals were heard before Commissioners Steven A. Keetle and Robert W. Hotz.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 167.67 acre agricultural parcel located in Adams 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 3.

**II. PROCEDURAL HISTORY**

For tax year 2015, the Adams County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$919,265.<sup>1</sup> Woodman Partnership Trust (the Taxpayer) protested this assessment to the Adams County Board of Equalization (the County Board) and requested an assessed valuation of \$675,940.<sup>2</sup> The County Board determined that the taxable value was \$919,265.<sup>3</sup>

For tax year 2016, the County Assessor determined that the assessed value of the Subject Property was \$918,525.<sup>4</sup> The Taxpayer protested this assessment to the County Board and

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<sup>1</sup> Exhibit 3:6.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 4:6.

requested an assessed valuation of \$804,788.<sup>5</sup> The County Board determined that the taxable value was \$918,525.<sup>6</sup>

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 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.<sup>7</sup> The Commission held a hearing on June 20, 2017.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>8</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>9</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>10</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>11</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>12</sup>

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<sup>5</sup> Exhibit 2.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Case File.

<sup>8</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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>9</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>10</sup> *Id.*

<sup>11</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>12</sup> *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.<sup>13</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>14</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 cross appeal.”<sup>15</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>16</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>17</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>18</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>19</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>20</sup> Taxable value is the

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<sup>13</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>14</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>15</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>16</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>17</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>18</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>20</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

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>21</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>22</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>23</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. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>24</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>25</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>26</sup>

## V. SUMMARY OF THE EVIDENCE

Jack Woodman, a co-trustee of the Taxpayer, testified to his belief that the Subject Property was over assessed. Mr. Woodman made three arguments to support this proposition. First, that the economy determines the value of agricultural land and horticultural land. Second, that location determines the value of agricultural land and horticultural land. Third, that the Subject Property was of lower quality due to the sandy nature of the soil and the slope of portions of the land. The Taxpayer failed to quantify the impact of any of these three arguments on the value of the Subject Property. Mr. Woodman also indicated that he was concerned that a sale between relatives in March of 2015 was used by the County when determining assessed values of

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<sup>21</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>22</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>23</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>24</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>25</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>26</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

agricultural land and horticultural land in Adams County.<sup>27</sup> Mr. Woodman gave his opinion that the actual value of the Subject Property for both tax years 2015 and 2016 was \$876,000.

The County offered the testimony of Jim Kuhn, the Head Appraiser for the Adams County Assessor's office (the Appraiser). The Appraiser testified that the County classifies agricultural land and horticultural land based on the use of the land and the quality of the soils on each parcel as sorted into Land Capability Groups (LCG). The County used FSA maps to determine the use of agricultural land and horticultural land in Adams County as dryland, irrigated cropland, grassland, shelterbelt, road, etc. Soil maps from the Natural Resources Conservation Service were used to determine classifications of the acres of all agricultural land and horticultural land in the county into Land Classification Groups based on soil composition and topography.<sup>28</sup>

The Appraiser personally viewed the Subject Property and observed the topography of the land. The Appraiser indicated that the County used three years of arm's-length sales of agricultural land and horticultural land to determine the assessed value of each LCG. The Appraiser testified that the sales used for the 2015 and 2016 tax year were different, and indicated that the per acre value of dryland agricultural land and horticultural land was lower for the 2016 tax year than the 2015 tax year. The Appraiser testified that he was aware of the sale between family members that the Taxpayer was concerned about and that this sale was not considered an arm's-length transaction because it was a sale between relatives. It was therefore not used when determining agricultural land and horticultural land valuations in Adams County.

## **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.

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<sup>27</sup> E5:9-10.

<sup>28</sup> See, Exhibit 4 page 12-13.

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

## VII. ORDER

### IT IS ORDERED THAT:

1. The decisions of the Adams County Board of Equalization determining the values of the Subject Property for tax years 2015 and 2016 are affirmed.<sup>29</sup>
2. The assessed value of the Subject Property for tax year 2015 is: \$919,265
3. The assessed value of the Subject Property for tax year 2016 is: \$918,525
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Adams County Treasurer and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2015 and 2016.
8. This Decision and Order is effective for purposes of appeal on August 28, 2017.

Signed and Sealed: August 28, 2017.

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Steven A. Keetle, Commissioner

SEAL

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Robert W. Hotz, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.), other provisions of Nebraska Statute, and Court Rules.

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<sup>29</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.