

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ronald and Josephine Klein Living Trust,
Ronald D. Klein, Trustee,
Appellant,

v.

Dawson County Board of Equalization,
Appellee.

Case Nos: 16A 0132 & 17A 0050

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

For the Appellant:

Lindsay E. Pedersen,
Katherine R. Hall,
Attorney at Law, PC LLO

For the Appellee:

Jared R. Dean
Deputy Dawson County Attorney

These appeals were heard before Commissioners James D. Kuhn and Robert W. Hotz.

I. THE SUBJECT PROPERTY

The Subject Property is a 159.67 acre parcel improved with a partially enclosed livestock shed located in Dawson County, Nebraska. The legal description and property record card for the Subject Property are found at Exhibit 3.

II. PROCEDURAL HISTORY

The Dawson County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$720,112 for tax year 2016 and \$720,112 for tax year 2017.¹ Ronald and Josephine Klein Living Trust (the Taxpayer) protested these assessments to the Dawson County Board of Equalization (the County Board) and requested assessed valuations of \$618,097² for tax year 2016 and \$595,000 for tax year 2017.³ The County Board determined that the taxable value of the Subject Property for both tax years 2016 and 2017 was \$720,112.⁴

¹ Exhibit 3 at 9.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibits 1-2.

The Taxpayer appealed the 2016 and 2017 decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties stipulated to the receipt of exchanged Exhibits 1 through 5. Exhibits 6 through 8 were offered by the taxpayer and admitted without objection. The Commission held a hearing on August 31, 2018, with Commissioner Hotz presiding.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁵ 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.⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ The County Board need not

⁵ 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).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

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.¹¹

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.¹² 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.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

IV. VALUATION

A. Law

Under Nebraska law,

Actual 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.¹⁵

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.¹⁶ The Courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation

¹¹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

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.²¹

V. SUMMARY OF THE EVIDENCE

According to the County Assessor's records, the Subject Property is a 159.67 acre parcel of which 136.5 acres are irrigated cropland, 19.51 acres are grassland, and 3.66 acres are road.²² As noted above, the Subject Property also contains a livestock shed valued by the County Board at \$510 for both tax years in issue,²³ but the value of the shed was minimal in comparison to the land component of the Subject Property and the record contains no basis to reverse the County Board's determination of its value. Accordingly, we address only the land component of the Subject Property below.

Two witnesses testified at the hearing. Bart Woodward testified on behalf of the Taxpayer. Mr. Woodward is a farm manager and real estate broker; he has been a certified general appraiser specializing in agricultural properties since 1992.²⁴ Mr. Woodward typically performs 70 to 100 appraisals per year; he also owns and manages farm property in Dawson County. Mr. Woodward performed a USPAP compliant appraisal of the Subject Property for the Taxpayer for tax year 2017,²⁵ concluding that the market value indicated by reconciliation of the cost, sales comparison, and income approaches to valuation was \$850,000 for tax year 2017.²⁶ Mr. Woodward's appraisal did not encompass tax year 2016, and he testified that he believed the value would be about five percent higher for that tax year.

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²² Exhibit 3 at 10.

²³ Exhibits 2-3. The Taxpayer's appraiser calculated the value of the shed to be \$810 using the cost approach; see Exhibit 5 at 32.

²⁴ Mr. Woodward's full resume is found at Exhibit 5, page 45.

²⁵ The Appraisal Report is found at Exhibit 5. See Exhibit 5 at 40 for USPAP compliance certification.

²⁶ This actual value would result in a taxable value of \$637,500 because agricultural property is taxed at 75% of its actual value.

The central issue in dispute between the parties is the difference in value (if any) between parcels utilizing gravity irrigation and those utilizing pivot irrigation. According to Mr. Woodward, pivot irrigation involves an automated mechanical device that passes over the ground and sprinkles water over the cropland. Gravity irrigation, in comparison, involves creating ridges in the cropland, laying pipes, and using siphons and the force of gravity to move water to each row of crops. Gravity irrigation is more labor intensive than pivot irrigation due to the need to lay the pipes each season, ridge the crops, and periodically open and close gates to release water to the crops. Gravity irrigation is also less effective because water may not reach the end of the crop rows. The cost of pivot irrigation varies based on the characteristics of the land, including terrain, shape, and land features. For the Subject Property, the shape of the parcel presents challenges to the operation of pivot irrigation due to a ribbon of grassland and a creek running roughly diagonally down the center of the parcel.²⁷ Mr. Woodward testified that, in his opinion, farm buyers prefer land that can be pivot irrigated, and most potential buyers for the Subject Property would be buying with the intent to convert it to pivot irrigation. Mr. Woodward further opined that parcels with pivot irrigation have a higher per acre land value than parcels with gravity irrigation, but the Taxpayer did not introduce any studies to support this assertion or offer a quantitative per acre difference in value between the two types of irrigation.

John Moore, the County Assessor, testified on behalf of the County Board. Mr. Moore has served as County Assessor for 33 years. He testified that, in the course of his work as County Assessor, he has been unable to discern a difference in sales prices between gravity irrigated and pivot irrigated land that is not attributable to the value of the pivot machinery itself.²⁸ He testified that he had studied sales in an attempt to determine whether such a difference existed, but that he had been unable to establish such a difference through analysis of market sales. Although the County Board included evidence of comparable sales among its exhibits, these sales were selected based on geographic proximity to the Subject Property and did not distinguish between methods of irrigation. The sales offered by the County Board tended to indicate that the Subject Property is assessed at less than 75% of market value for similar properties in the same geographic area.

²⁷ Maps of the Subject Property can be found at Exhibit 5, pages 41 and 42.

²⁸ The pivot machinery is regarded as personal property and is not assessed as part of the parcel.

We observe that the parties are using different methodologies to reach their determinations of the Subject Property's value. The County Assessor reviews all comparable sales in the relevant market area, determines a specific value for each land capability group and land valuation group (LCG/LVG)²⁹ within the market area, and calculates the assessed value of the parcel based on its LCG/LVG composition. Mr. Woodward also assigned values for each LCG/LVG comprising the Subject Property, but rather than deriving these values from market-wide statistics, he derived the values from a smaller group of sales selected for comparability to the Subject Property. He also selected comparable sales from among parcels that had only gravity irrigation, whereas the County Assessor's sales file includes parcels utilizing both gravity and pivot irrigation.

The Nebraska Supreme Court has determined that, when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to rebut the presumption in favor of the County Board's valuation.³⁰ In this case, the Taxpayer has presented such an appraisal for tax year 2017, and so the presumption in favor of the County Board has been rebutted for that tax year. As discussed above, however, even with the presumption rebutted, the burden of proof remains on the Taxpayer to show by clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable.³¹ The Taxpayer's burden to show the valuation placed upon the Subject Property to be unreasonable is not met by showing a mere difference of opinion. Rather, the Taxpayer must establish that the valuation placed upon the property when compared with valuations placed on other similar property is grossly excessive and is a result of arbitrary or unreasonable action and not just a mere error of judgment.³² The "clear and convincing" evidence required to reverse a decision of the County Board is a higher evidentiary standard than the "competent" evidence required to rebut the presumption. Thus, a taxpayer may be able to rebut the initial presumption without reaching the level of proof required to obtain relief.

In this case, we find that the Taxpayer has not met this burden. The analyses of Mr. Woodward and the County Assessor employed different methodologies, but both reflect the

²⁹ An LCG is defined at 350 Nebraska Administrative Code, Ch. 14 § 004.08E.

³⁰ *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

³¹ *Id.*

³² *Id.*

opinions of experienced professionals with extensive knowledge of property valuation in Dawson County. Mr. Moore's testimony that he has attempted to quantify a difference in sales prices between gravity and pivot irrigated parcels, but that he has been unable to do so, is significant. In the absence of any study or other detailed market-wide analysis from Mr. Woodward, we are unable to conclude that the Taxpayer has provided sufficient evidence that gravity irrigated parcels should be treated differently from pivot irrigated parcels for assessment purposes. We find that the differences between the values set by the County Board and the values requested by the Taxpayer are the result of differences of opinion, and are not the result of arbitrary or unreasonable action. Consequently, we conclude that the Taxpayer has not proven by clear and convincing evidence that the decisions of the County Board are arbitrary or unreasonable.

VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination as to tax year 2017; the presumption was not rebutted for tax year 2016. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of the County Board must be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dawson County Board of Equalization determining the value of the Subject Property for tax years 2016 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax years 2016 and 2017 is \$720,112.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawson County Treasurer and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 years 2016 and 2017.
7. This Decision and Order is effective for purposes of appeal on November 9, 2018.³³

Signed and Sealed: November 9, 2018

James D. Kuhn, Commissioner

SEAL

Robert W. Hotz, Commissioner

³³ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of the Nebraska Statutes and Court Rules.