

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Beef Packers, Inc.,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case Nos: 16A 0111, 16A 0112, 16A 0113,
16A 0114 & 16A 0115

Decision and Order

For the Appellant:

Nebraska Beef Packers, Inc.,
Rudy Stanko, Corporate Officer

For the Appellee:

Jamian Simmons,
Sheridan County Attorney

The appeals were heard before Commissioners Keetle and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of five parcels located in Sheridan County, Nebraska. The legal description of each parcel of the Subject Property is found at Exhibits 1-5. The property record cards for each parcel of the Subject Property is found at Exhibits 7-11.

II. PROCEDURAL HISTORY

For the parcel in Case No 16A-111 the Sheridan County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$722,254 for tax year 2016. Nebraska Beef Packers, Inc (the Taxpayer) protested this assessment to the Sheridan County Board of Equalization (the County Board) and requested a lower assessed valuation. The Sheridan County Board determined that the taxable value of the parcel for tax year 2016 was \$695,541.¹

For the parcel in Case No 16A-112 the Assessor determined that the assessed value of the Subject Property was \$32,523 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested a lower assessed valuation. The County Board determined that the taxable value of the parcel for tax year 2016 was \$32,523.²

¹ Exhibit 1.

² Exhibit 2.

For the parcel in Case No 16A-113 the Assessor determined that the assessed value of the Subject Property was \$440,137 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested a lower assessed valuation. The County Board determined that the taxable value of the parcel for tax year 2016 was \$440,137.³

For the parcel in Case No 16A-114 the Assessor determined that the assessed value of the Subject Property was \$2,904 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested a lower assessed valuation. The Sheridan County Board determined that the taxable value of the parcel for tax year 2016 was \$2,904.⁴

For the parcel in Case No 16A-115 the Assessor determined that the assessed value of the Subject Property was \$270,597 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested a lower assessed valuation. The Sheridan County Board determined that the taxable value of the parcel for tax year 2016 was \$255,613.⁵

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 23, 2017, at which the parties offered exhibits and presented evidence and argument.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁶ 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."⁷

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

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5.

⁶ 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).

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ 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.¹²

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.”¹³ 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.”¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

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

⁸ *Id.*

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

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹³ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁶

“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.”¹⁷ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁸ 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.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

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.²²

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²³

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.²⁴

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

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

B. Summary of the Evidence

Rudy Stanko, a corporate officer of the Taxpayer, offered testimony on its behalf. Stanko asserted that the appeals were brought because no one with the County could explain exactly how the assessed values of the Subject Property were determined. Stanko offered no opinion of value for the Subject Property for tax year 2016 other than his assertion that the assessed values as determined by the County Assessor and County Board for prior tax years would be more appropriate.

Tina Steinner, the Sheridan County Assessor (the Assessor), testified that the assessed values of Agricultural and Horticultural land in Sheridan County were determined using market sales. The Assessor testified that the 2016 values were set and the County Board protest proceedings for 2016 were held before she assumed the Assessor's office. The Assessor presented a Sales Study or listing of qualified sales of real property containing agricultural and horticultural land, indicating the assessed value, sales price, non-ag value and improvement value for each sold property, as well as the acres of each subclasses Land Valuation Group (LVG) on each property.²⁵ The Assessor testified that these sales were analyzed to determine the appropriate increase or decrease in the assessed values for each LVG for the current tax year.

Generally, when determining the current per acre value of a subclass or agricultural or horticultural land the county assessor will not base a determination solely on the median of the per acre value of sales. Instead the county assessor takes into account the predominant subclass of agricultural and horticultural land included in the sale (i.e., did the real property associated with the transfer contain more 1A or some other subclass of agricultural or horticultural land). There is some subjectivity afforded the county assessor when determining which sale or sales to give the most weight. The Assessor testified that when there were no sales or limited sales of a particular subclass she determined the appropriate adjustments based on the proportionality of the assessed values of each LVG to the others.

A county assessor must make judgment calls concerning the amount of weight to give each sale and there may not be a written mathematical equation that can completely illustrate the

²⁵ E22

process. It is possible for reasonable minds to disagree concerning the per acre value of a subclass of agricultural or horticultural land. The appraisal of real estate is not an exact science.²⁶ The Nebraska Supreme Court has concluded that mathematical precision in assessment valuations and equalization is impossible.²⁷ The burden on the Taxpayer is to show that the County Board's determinations were unreasonable or arbitrary.²⁸ A "mere difference of opinion" is not sufficient to meet this burden unless the Subject Property is not equalized with other properties.²⁹

A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.³⁰ "A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion."³¹

The Assessor testified that the sales information was input into a spreadsheet to determine if the ratio of the assessed values to the sales prices met the requirements of law.³² This ratio study indicates that the assessed values for agricultural and horticultural land fall within the required levels.³³ The record further indicates that the Assessor looked at comparable sales which occurred in Cherry County and Dawes County to determine if her assessed values were correct.³⁴ Additionally the Assessor looked at the assessed values per LVC for the surrounding counties when determining if her assessed values were appropriate.³⁵

The Nebraska Supreme Court has held that a Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of

²⁶ *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

²⁷ *LeDioyt v. County of Keith*, 161 Neb. 615, 622, 74 N.W.2d 455, 461 (1956).

²⁸ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Bd. Of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (citations omitted).

²⁹ *Id.*

³⁰ See, *Pitman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

³¹ *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

³² E21

³³ E21:5

³⁴ E23

³⁵ E20

proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary.³⁶

The Commission finds that the Taxpayer has not produced clear and convincing evidence that that the County Board's determinations which relied upon the County Assessor's assessed values for agricultural and horticultural land were unreasonable or arbitrary. The Commission finds that the Taxpayer's evidence is not sufficient to overcome the presumption in favor of the County Board's determinations or the burden imposed on the Taxpayer.

V. EQUALIZATION

A. 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.”³⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ 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.⁴² The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴³ 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

³⁶ *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

³⁷ *Neb. Const.*, Art. VIII, §1.

³⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁹ *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).

⁴⁰ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴² *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).

⁴³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”⁴⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁵

B. Summary of the Evidence

The Taxpayer alleged that the Subject Property was not taxed uniformly and proportionally with other real property in Sheridan County because there was property located in the County which was not being taxed. The Taxpayer did not present any evidence to demonstrate that there was real property located in Sheridan County that was not being assessed for purposes of taxation for tax year 2016.

If taxable values are to be equalized it is necessary that the Taxpayer established by “clear and convincing evidence that the valuation 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 plain legal duty, and not mere error of judgment [sic].”⁴⁶ Based on the evidence presented as described above, the Commission finds that the Taxpayer has not met its burden of persuasion to obtain relief on the basis of lack of equalization.

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 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 appeals of the Taxpayer are denied.

VII. ORDER

IT IS ORDERED THAT:

⁴⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁵ *Id.* at 673, 94 N.W.2d at 50.

⁴⁶ *Id.* at 670, 94 N.W.2d at 49-50

1. The decisions of the Sheridan County Board of Equalization determining the values of the Subject Property for tax year 2016 is affirmed.⁴⁷
2. The assessed values of the Subject Property for tax year 2016 are:

Case No. 16A-111

Land:	\$665,492
Improvements	<u>\$ 30,049</u>
Total	\$695,541

Case No. 16A-112

Land:	<u>\$ 32,523</u>
Total	\$ 32,523

Case No. 16A-113

Land:	<u>\$440,137</u>
Total	\$440,137

Case No. 16A-114

Land:	<u>\$ 2,904</u>
Total	\$ 2,904

Case No. 16A-115

Land:	\$192,213
Improvements	<u>\$ 63,400</u>
Total	\$255,613

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

⁴⁷ Taxable 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 July 6, 2017.

Signed and Sealed: July 6, 2017

Steven A. Keetle, Commissioner

SEAL

Nancy J. Salmon, Commissioner

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