

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

Barbara A. Hager, Trustee, August  
Lutkemeier Credit Trust.  
Appellant,

v.

Clay County Board of Equalization  
Appellee

Case No: 10A-089

Decision Affirming the Clay County Board  
of Equalization

**For the Appellant:**

Barbara A. Hager, Trustee  
August Lutkemeier Credit Trust

**For the Appellee:**

Ted Griess  
Clay County Attorney

Heard before Commissioners Hotz and Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a parcel of agricultural or horticultural land located in Clay County, Nebraska. The parcel contains 161.65 acres and several small outbuildings. (E2:3) The legal description of the parcel is found at Exhibit 2:1.

**II. PROCEDURAL HISTORY**

The Clay County Assessor determined that the assessed value of the subject property for tax year 2010 was \$424,265, including \$423,880 for land and \$385 for outbuildings. The August Lutkemeier Credit Trust (Taxpayer) protested this assessment to the Clay County Board of Equalization (BOE) and requested an assessed valuation of \$319,010, including \$319,010 for land and \$0 for improvements. The BOE determined that the assessed value for tax year 2010 was \$424,265, including \$423,880 for land and \$385 for outbuildings. E1:1.

The Taxpayer appealed the decision of the BOE to the Tax Equalization and Review Commission (Commission). The parties exchanged sixteen exhibits prior to the appeal hearing. The Commission held a hearing on June 22, 2011.

### III. STANDARD OF REVIEW

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

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.

*Id.* 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *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. 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) . 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

### 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.

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

Neb. Rev. Stat. §77-112 (Reissue 2009). "Actual value, market value, and fair market value mean exactly the same thing." *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). 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. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1 at 12:01. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.

Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). A parcel of land means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. See, Neb. Rev. Stat. §77-132 (Reissue 2009).

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.

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

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

The subject property is a gravity-irrigated agricultural parcel that is approximately 1 mile long and ¼ mile wide. The Taxpayer testified that due to its dimensions, the parcel was more difficult to farm than other parcels. It was asserted that, “[m]y tenant needs to furnish one mile of pipe and two motors rather than [o]ne half mile of pipe and one motor as would be required on a normally [s]haped quarter of land; this in turn reduces the income...” Per the tenant farmer, the shape of the farmland required “1,700 rows compared to 850 rows on a square quarter,” that “this involves more equipment turning and more fuel,” that “with the width of 1-mile, 2 wells and motors are required along with 2 reuse pits and motors,” and that “labor is doubled compared to a square quarter.” E8:1. The Taxpayer asserted that the parcel should have had a reduced value per acre under 350 Neb Admin. Code, ch. 14 §006.04C and 350 NAC 14-006.04C because of its size and shape. 350 Neb Admin. Code, ch. 14§006.04C allows for land use adjustments due to “parcel size or shape.” 350 Neb Admin. Code ch.14§006.04C allows for land use adjustments due to location limitations. While the Taxpayer brought competent evidence regarding the challenges in farming a tract of land with the dimensions of the parcel, the Taxpayer did not provide clear and convincing evidence *quantifying* any decrease in the actual value of the parcel due to its size, shape, or location limitations.

The Taxpayer disputed that the parcel consisted of 161.65 acres. The property record file for the Subject Property indicated the number of acres as 161.65. E2:1. A Farm Service Agency Report of Commodities (FSA Report) for the Subject Property indicated the number of acres as

160. E7:4-6. It is unclear from the record whether the parcel consists of less than 161.65 acres. The Taxpayer did not prove by clear and convincing evidence that the number of acres of the parcel was incorrect.

The FSA Report appeared to include two reuse pits in the total acres, but not in the number of crop acres. E7:6. The FSA Report lists a total of certified irrigated acres at 149.20. The County Assessor testified the reuse pits were included with the irrigated acres as indicated in the Property Record File for the Subject Property. The Property Record File indicated a total of 150.18 irrigated acres on the Subject Property. 350 Neb Admin. Code, ch. 14 §002.37B permits the classification of irrigation pits used in conjunction with irrigation systems as “contiguous irrigated land.” The Taxpayer did not prove by clear and convincing evidence that reuse pits should not have been included with the number of irrigated acres.

The Taxpayer asserted the actual value of the parcel of \$424,265 was too high for tax year 2010 because it had increased from \$250,235 for tax year 2007. While the record indicates the taxable value of the parcel has increased each year since 2007, the Nebraska Supreme Court has held that the prior year’s assessment is not relevant to the subsequent year’s valuation. E2:1, *See, DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Taxpayer also asserted the buildings on the land should be given no value. The County Assessor gave the “Out Buildings,” including a shed, barn, two grain bins, and a corn crib, a total taxable value of \$385. E2:1. See photographs at E6:3. The Taxpayer did not prove by clear and convincing evidence that these improvements should be valued at any amount other than what was determined by the BOE.

## 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.” *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *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). Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *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). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981). 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 grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

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

The property record file for the subject property indicates that the agricultural land component of the parcel was valued based upon it being classified as irrigated cropland. E2:2. Specifically, the irrigated land was classified by soil type, and each soil was assigned a value per acre ranging from \$2,095 to \$2,870. E2:2. In addition, the roadway on the parcel was valued at

\$2,000 per acre. E2:2. The land component of the parcel was determined to be 161.65 acres and valued in total at \$423,880.

The Taxpayer asserted that a comparable irrigated agricultural land parcel had a lower valuation than the subject property. (E9) The size and shape of the comparable parcel is substantially the same as the subject, one mile long and one-quarter mile wide, as indicated on its Property Record File. E9:5. The comparable parcel was valued as irrigated cropland. (E9:6). The Taxpayer asserted the irrigation was done by pivot irrigation rather than by gravity. (E9:2). He also asserted the crop rows on the comparable parcel were one mile long (as distinguished from the subject's rows being one-quarter mile long) and that agricultural land with mile-long rows was more valuable than land with quarter-mile rows. As discussed above, there is no clear and convincing evidence in the record *quantifying* any decrease in the actual value of the subject parcel due to its size or shape.

The Taxpayer also asserted that pivot irrigation made the agricultural land more valuable than would gravity irrigation. The Taxpayer claimed that a recent publication from AgriAffiliates, Inc. notes that pivot-irrigated land has \$1,600 per acre greater value than gravity-irrigated land. E9:2. No report from AgriAffiliates, Inc. was made a part of the record in this appeal. According to the *2011 Reports & Opinions of the Property Tax Administrator for Clay County*, the average assessed value of dry land in Clay County for 2010 was \$1,384 per acre. *2011 Reports & Opinions*, Exhibit 18B, page 4. As noted in Exhibit 2:2, the Taxpayer's most valuable irrigated land, 1A, was valued at \$2,870 per acre. Even if the Commission were to rely on the assertion made by the Taxpayer that the gravity-irrigated agricultural land should be valued at \$1,600 less per acre than the pivot-irrigated agricultural land of the comparable, the Taxpayer's irrigated land would be valued at no more than \$1,270 per acre (\$2,870 - \$1,600) while the average dry land value in Clay County was \$1,384 for the same tax year. Such a finding would be unreasonable. There is no clear and convincing evidence *quantifying* any decrease in the actual value of the subject parcel due to the fact that it was gravity-irrigated.

Finally, the Taxpayer asserted an equalized value should be given that would reduce the taxable value of the subject property by \$100,000. E9:2. The Taxpayer did not explain how this amount was calculated. Moreover, the subject property was valued at \$423,880 and the comparable was valued at \$377,010, a difference of \$46,870, not \$100,000. Further, when comparing this comparable to the subject property, each soil type was valued the same per acre.

E2:2 and E9:6. Therefore, there is no clear and convincing evidence that the subject property was valued more than the comparable parcel.

## VI. CONCLUSION

The Commission finds that the Taxpayer has not provided 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 the Taxpayer has not provided clear and convincing evidence that the County Board's determination was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

## VII. ORDER

IT IS ORDERED THAT:

1. The Decision of the Clay County Board of Equalization determining the value of the subject property for tax year 2010, is Affirmed<sup>1</sup>.
2. That the Assessed value of the Subject property for tax year 2010 is:

Land:	\$423,880
<u>Improvements</u>	<u>\$ 385</u>
Total:	\$424,265

3. This decision and order, if no appeal is timely filed, shall be certified to the Clay County Treasurer and the Clay County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.

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<sup>1</sup> Assessed value, as determined by the county board of equalization, 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 order is effective for purposes of appeal on October 19, 2011.

Signed and Sealed: October 19, 2011

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Robert W. Hotz, 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 (2010 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.