

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Frederick Wayne Hansmeier, Trustee,
Frederick Wayne Hansmeier Family Trust,
Appellant,

v.

Keith County Board of Equalization,
Appellee

Case No: 10A-040 & 10A-041

Order Affirming the Determination of the
Keith County Board of Equalization

For the Appellant:

Frederick Wayne Hansmeier, Trustee,
Frederick Wayne Hansmeier Family Trust

For the Appellee:

Randy Fair,
Keith County Attorney

Heard before Commissioners Hotz and Salmon.

I. THE SUBJECT PROPERTY

The subject property in Case No. 10A-040 is a 162.52 acre agricultural parcel with no improvements. The subject property in Case No. 10A-041 is a 161.46 acre agricultural parcel with no improvements. Both parcels of agricultural land and horticultural land are located in Keith County, Nebraska.¹

II. PROCEDURAL HISTORY

The Keith County Assessor determined that the assessed value of the subject property in Case No. 10A-040 was \$201,880, and in Case No. 10A-041 was \$212,215 for tax year 2010. E8:1, E9:1. Frederick Wayne Hansmeier, Trustee, Frederick Wayne Hansmeier Family Trust (the Taxpayer) protested this assessment to the Keith County Board of Equalization (the County Board). The County Board determined that the assessed value for tax year 2010 was \$201,880 in Case No. 10A-040 and \$212,215 in Case No. 10A-041. E1:1, E2:1. The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a consolidated hearing for these two appeals.

¹ The legal description for the parcel in Case # 10A-040 is found at E8:1. The legal description for the parcel in Case # 10A-041 is found at E9:1.

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).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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). The Courts have held that “[a]ctual 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. 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

1. 10A-040

Wayne Hansmeier testified on behalf of the Taxpayer. Hansmeier said that a well and irrigation system were added to the parcel in 2005, and that approximately 130 acres were certified by the Natural Resources District (NRD) as irrigated. He testified that he received Farm Service Agency (FSA) payments for this property. He described the parcel as a “poor quarter,” with yield capability of 170 bushels per acre of corn. E7:1. The Taxpayer provided no other evidence to quantify the actual value of the parcel. The property record card for the parcel indicated a mixture of land uses including dry land, grass land, and irrigated land. Each soil type was valued by the Assessor per a land valuation grouping (LVG). E8:2.

2. 10A-041

Hansmeier testified that 130 acres were pivot irrigated and that pond overflow created 10 to 20 acres of non-producing land approximately 50% of the time (one year out of two). He testified that this parcel also had some irrigated acres certified by the NRD and that he received FSA payments for these acres. The Taxpayer provided no other evidence to quantify the actual

value of the parcel. The property record card for the parcel indicated a mixture of land uses including dry land and irrigated land. Each soil type was valued by the Assessor per a land valuation grouping (LVG). E9:2.

V. 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 decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The Decision of the Keith County Board of Equalization determining the value of the subject property for tax year 2010 is affirmed.
2. That the Assessed value of the Subject property for tax year 2010 is:

Case No. 10A-040: \$201,880

Case No. 10A-041: \$212,215

3. This decision and order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011Supp.)
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.

7. This order is effective for purposes of appeal on April 12, 2012.

Signed and Sealed: April 12, 2012.

Robert Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.