

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald Brownlee
Appellant,

v.

Otoe County Board of Equalization
Appellee

Case No: 11A-052

Order Affirming the Determination of the
Otoe County Board of Equalization

For the Appellant:
Donald Brownlee,

For the Appellee:
David Partsch,
Otoe County Attorney

Heard before Commissioners Hotz and Salmon

I. THE SUBJECT PROPERTY

The Subject Property is a 200 acre agricultural parcel located in Otoe County, Nebraska. The legal description of the subject property is found at Exhibit 4. The property record card for the subject property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Otoe County Assessor determined that the assessed value of the subject property was \$403,380 for tax year 2011. E1:1. Donald Brownlee (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$384,860. E1:1. The County Board determined that the assessed value for tax year 2011 was \$403,380. E1:1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged 24 exhibits. The Commission held a hearing on March 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). In an appeal “the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (quoting *Bumgamer v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

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). “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.” 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). The prior year’s assessment is not relevant to the subsequent year’s valuation. *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).

B. Summary of the Evidence

The Taxpayer asserted that only the land value of the subject property was in dispute. He argued that the taxable value of the land should be \$301,160 rather than its assessed value of \$319,680. The value of the improvements was not contested. He stated his belief that the subject property is among the least productive agricultural parcels in Otoe County. However, other than this statement, he offered no evidence to support this belief.

The Taxpayer testified that the Otoe County Assessor (Assessor) had increased the taxable value of the subject property by 8% since 2009. He asserted that this percentage increase from the assessed value of the prior tax year was excessive. The taxable value for a prior year is generally not admissible as evidence of value in the current tax year. *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). A percentage increase in the assessed value from

the taxable value of the prior year is not per se evidence of an inappropriate determination of taxable value.

The Taxpayer also testified that of the 200 acres of the subject property, 156 acres were “farmed,” 28 acres were pasture and grass, and that 16 acres consisted of roads, water, and buildings. The property record card for the subject property indicated that 154.53 acres were dry land, 38.5 acres were grass land, 4.97 acres were road, and 2.0 acres were farm site and home site. E6:3, E11:1. The Taxpayer disputed the Assessor’s use of a soil classification system (LVG codes) to classify the agricultural uses of the subject property and to assign a per acre value to each LVG code. However, he provided no evidence that the LVG codes were incorrect other than his opinion as the owner of the property. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). However, “the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Id.* at 284, 276 N.W.2d at 812 (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

The Assessor testified that agricultural land and horticultural land in Otoe County was assessed using mass appraisal practices. She stated that Otoe County consisted of two market areas for tax year 2011, market area 7000 and market area 8000. She testified that the values for the price per acre for each LVG in each market area was based upon qualified sales from that market area. The Assessor testified that the LVG codes assigned to the subject property were appropriate and that the assessment per acre for similar LVG’s for comparable properties in the same market area (market area 7000) were consistent with the per acre values of the subject property. For example, 133.1 acres of the subject property were classified with an LVG code of 3D1, with a per acre value of \$1,690. Likewise, other properties in market area 7000 with an LVG were also assessed at \$1,690 per acre (for example, E11:1, E12:1, E12:2, E13:2, and E14:2). The Commission has reviewed the evidence of comparable properties in market area 7000 for tax year 2011 with like LVG codes as the subject property and has found that each

property has been assigned the same value per acre for each LVG code as assigned to the subject property. E11 to E20. The Commission finds there is no evidence that comparable property received favorable treatment as compared to the subject property. The Commission also finds that the Taxpayer's difference of opinion regarding the accuracy of soil types is not clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable.

V. 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 determination was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Otoe County Board of Equalization determining the value of the subject property for tax year 2011 is affirmed.
2. The assessed value of the subject property for tax year 2011 is:

Land	\$319,680.00
<u>Improvements</u>	<u>\$83,700.00</u>
Total	\$403,380.00

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

7. This order is effective for purposes of appeal on April 4, 2012

Signed and Sealed: April 4, 2012

Robert W. 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.