

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Connie L. Anderson
Appellant,

v.

Sarpy County Board of Equalization
Appellee

Case No: 10A-149
Decision

For the Appellant:
Connie L. Anderson
Pro Se

For the Appellee:
Kerry Schmid
Sarpy County Attorney

Heard before Thomas D. Freimuth and Robert W. Hotz.

I. THE SUBJECT PROPERTY

The Subject Property is a 36.45 acre parcel located in Sarpy County, with a legal description of: TAX LOT R 12-12-10 (36.45 AC). Ex.1.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the subject property was \$245,606 for tax year 2010. Ex. 1. Connie L. Anderson (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$175,972. (Ex. 5:1). The County Board determined that the assessed value for tax year 2010 was \$245,606. Ex. 1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, as ordered by the Commission, Kerry Schmid, Assistant Sarpy County Attorney, attempted to schedule a pre-hearing conference with the Taxpayer. No response was received by Ms. Schmid from the Taxpayer, and therefore no meeting was held pursuant to the Commission's Order.

A hearing on the merits was held on this matter on October 11, 2011. The Taxpayer did not appear. Ms. Schmid appeared on behalf of the County Board. The Commission received Exhibit 1 in evidence, which is the County Board's "Final Determination for Protest Form 422."

The Commission also took notice of its case file for the purpose of evidence in support of personal and subject matter jurisdiction. Thereafter, Ms. Schmid made a motion for default judgment on the basis of the Taxpayer's failure to appear, and the Commission took the matter under advisement.

After the above-referenced hearing adjourned, the Commission discovered that the County Board recommended (via Exhibit 2) lowering the final determination from \$245,606 to \$238,297. Thus, with the approval of Ms. Schmid, the Commission contacted the Taxpayer to determine whether she desired to re-open the matter for the limited purpose of receiving Exhibit 2 and the 2010 Property Record Card (Exhibit 9) in evidence, which would have the effect of lowering her assessed value from \$245,606 to \$238,297.

On October 24, 2011, the Commission re-opened the matter via a telephonic hearing. Thomas D. Freimuth and Robert W. Hotz appeared for the Commission, Kerry Schmid appeared telephonically on behalf of the County Board, and the Taxpayer represented herself telephonically. The parties waived notice of the hearing, and Ms. Schmid made a motion to withdraw her motion for default judgment previously submitted on October 11, 2011. The Commission granted the County Board's motion to withdraw its motion for default judgment.

The parties agreed to placing Exhibit 2 and Exhibit 9 referenced above in evidence. Thus, the Commission received Exhibit 2 and Exhibit 9 in evidence. Thereafter, the Commission took the matter under advisement and adjourned.

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).

III. 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

The County offered Exhibits 2 and 9 into evidence. The Commission received into evidence Exhibits 2 and 9. Exhibit 2 is a Memo from Tim Ederer, Real Estate Appraiser for Sarpy County, discussing the valuation of the subject property. The memo indicates that the Appraiser conducted an inspection of the subject property in July 2011. Following the inspection, the Appraiser revised his opinion of value based upon information not available at the time the County Board made its final determination. In this regard, the inspection revealed changes to the siding requiring a use delineation modification. In Exhibit 2 the Appraiser expressed his revised opinion of value as \$238,297 (Non-Agland \$69,600 + Agland \$18,399 + Improvements \$150,298 = \$238,297).

Exhibit 9 is the Sarpy County Assessor's Office Farm Residence Data printout for the subject property. This printout also indicates the correct value for the property for year 2010 should be \$238,297 (\$87,999 Land + \$150,298 Improvements = \$238,297). The Commission gives great weight to the Appraiser's new opinion of value.

IV. CONCLUSION

The Commission finds that competent evidence has been provided 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 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 Vacated and Reversed.

V. ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the value of the subject property for tax year 2010 is Vacated and Reversed¹.

¹ 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.

2. That the Assessed value of the Subject property for tax year 2010 is:

Land	\$87,999
<u>Improvements</u>	<u>\$150,298</u>
Total	\$238,297

3. This decision and order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy 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.
7. This order is effective for purposes of appeal on January 18, 2012.

Signed and Sealed: January 18, 2012

SEAL

Thomas D. Freimuth, Commissioner

Robert W. Hotz, 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.