

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brian J. McAllister,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee,

Case Nos: 11A-167 & 12A-109

Decision and Order Affirming the
Determination of the Lancaster County
Board of Equalization in 11A-167

Decision and Order Reversing the
Determination of the Lancaster County
Board of Equalization in 12A-109

For the Appellant:

Brian J. McAllister and Rita McAllister,
Pro Se

For the Appellee:

Michael E. Thew,
Deputy Lancaster County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 20.02 acre parcel, improved with a residence and outbuildings, located at 17321 Pioneers Blvd. in Lancaster County, Nebraska. The legal description of the Subject Property is found at Exhibit 1, page 1. The property record cards for the Subject Property are found at Exhibit 3, pages 8-12, and Exhibit 10, pages 1-4.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (Assessor) determined that the assessed value of the Subject Property was \$133,800 for tax year 2011.¹ Brian J. McAllister (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (County Board). The County Board determined that the taxable value for tax year 2011 was \$129,500.²

¹ E1:1.

² E1:1. This consisted of an improvement value of \$47,500, an agricultural land and horticultural land special valuation value of \$23,500, and a home site value of \$58,500.

The Assessor determined that the assessed value of the Subject Property was \$146,100 for tax year 2012.³ The Taxpayer protested this assessment to the County Board, requesting a taxable value of \$129,500.⁴ The County Board determined that the taxable value for tax year 2012 was \$146,100.⁵

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged 35 exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of all exchanged exhibits. The parties also stipulated to the number of agricultural acres on the Subject Property per land category.⁶

The Commission held a consolidated hearing on March 22, 2013.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is *de novo*.⁷ 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."⁸

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.⁹

³ E2:1.

⁴ E4:3.

⁵ E1:1. This consisted of an improvement value of \$60,000, an agricultural land and horticultural land special valuation value of \$41,100, and a home site value of \$45,000.

⁶ The parties agreed that there were 8.32 acres of Dry Land, 5.49 acres of Grass Land, and 3.44 acres of Waste Land. These acreage totals are shown in handwriting on Exhibit 3, page 11. Only the valuation of the land was put at issue by the Taxpayer. The value of the improvements was not in dispute.

⁷ See, Neb. Rev. Stat. §77-5016(8) (2012 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).

⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁹ *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.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹² 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.¹³

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.”¹⁴ 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.”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 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

¹⁰ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

¹² 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).

¹³ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

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

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 “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²²

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.²³

Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343.²⁴

“The assessor shall annually use comparable sales from within the influenced area or other areas of similar influence to determine the actual value of the agricultural land and horticultural land in the area.”²⁵

The assessor shall annually determine the special valuation assessment. The information shall be based upon sales of similar classes or subclasses of agricultural land and horticultural land from agricultural and horticultural areas in which actual value is not subject to influences by other purposes and uses. Sales within the same county that, in the judgment of the assessor, do not have nonagricultural or nonhorticultural influences on the value of agricultural or horticultural

¹⁷ *Id.*

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. §77-132 (Reissue 2009).

²³ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-201(3) (Reissue 2009).

²⁵ NAC Title 350, ch 11, §005.01, Rev. 3/15/09.

land, may be used for market comparison in determining the special valuation assessment. Care should be taken to ensure that the uninfluenced sales represent land that is comparable to the land to which the special valuation assessment is being applied.²⁶

“Sales in neighboring counties shall be used in the market comparison approach if all agricultural and horticultural sales within the county have been determined to reflect selling prices that have been influenced by other than agricultural and horticultural purposes and uses.”²⁷

“Home site shall mean land within a parcel, which is used or intended to be used for residential purposes.”²⁸ “Farm home site shall mean one acre or less of land that is contiguous to a farm site and upon which is located a residence and necessary improvements needed for residential purposes. This land shall not be classified or assessed as agricultural or horticultural land.”²⁹

Farm site shall mean land containing improvements that are agricultural or horticultural in nature, including an uninhabitable or unimproved farm home site, all of which is contiguous to agricultural or horticultural land. This land shall not be classified as agricultural or horticultural land and shall not include a home site.³⁰

B. Summary of the Evidence

The Taxpayer did not dispute the valuation of the improvements for either tax year. The Taxpayer argued that the land component of the Subject Property was not valued appropriately or correctly in two respects: 1) that the Assessor’s methodology for determining the special valuation of the agricultural land and horticultural land (agricultural land) used sales in violation of the Nebraska Administrative Code (Rules & Regulations), and 2) that a portion of the land designated “home site” should have been valued as “farm site.”

²⁶ NAC Title 350, ch. 11, §005.02, Rev. 3/15/09.

²⁷ NAC Title 350, ch.11, §005.02.A, Rev. 3/15/09.

²⁸ NAC Title 350, ch. 10, §001.02, Rev. 3/15/09.

²⁹ NAC Title 350, ch. 10, §001.02A, Rev. 3/15/09.

³⁰ NAC Title 350, ch. 10, §001.03, Rev. 3/15/09.

For tax year 2011, the County Board determined value based upon a modification of the number of acres per land category as shown in handwriting on Exhibit 3, page 11.³¹ The County Board did not modify the home site value or the improvement value.

The Taxpayer called Robert Ogden to testify regarding the Assessor's methodology. Ogden was the Chief Field Deputy for the Assessor and also held a General Certified appraisal license. He provided a detailed explanation of the methodology used by the Assessor to value the Subject Property.

1. Special Valuation

Ogden testified that all agricultural land in Lancaster County is classified as special valuation land since its value is deemed to be influenced³² by its proximity to the City of Lincoln. He stated that the portion of the Subject Property designated as agricultural land was qualified for special valuation. Ogden explained that the base rates for valuing each land category (Dry, Irrigated, Grass) were derived from sales of uninfluenced agricultural land outside of Lancaster County. He testified that since all agricultural sales in Lancaster County were influenced by their proximity to Lincoln, the Assessor utilized sales of similar, uninfluenced agricultural land sales from neighboring counties. Ogden stated that such sales were provided to the Assessor by the State Property Tax Administrator (PTA) for tax years 2011³³ and 2012³⁴ based upon the applicable three year sales study period.³⁵

Brian McAllister testified on behalf of the Taxpayer and as owner of the Subject Property. McAllister asserted that the uninfluenced sales provided by the PTA and utilized by the Assessor were not the most comparable parcels to the Subject Property. The Taxpayer referred the Commission to the Rules & Regulations defining Land Areas³⁶ and Market Area.³⁷ McAllister testified that all of the sales of uninfluenced agricultural land used by the Assessor³⁸ were from

³¹ The County Board determined that the agricultural land that qualified for special valuation consisted of 8.32 acres of Dry Land, 5.49 acres of Grass Land, and 3.44 acres of Waste Land.

³² For the Regulatory meaning and application of the terms "influenced" and "uninfluenced," see NAC Title 350, ch. 11, §005, Rev. 3/15/09.

³³ Exhibit 20.

³⁴ Exhibit 19.

³⁵ See also, NAC Title 350, ch 12, §003.07A(3), Rev. 3/15/09.

³⁶ NAC Title 350, ch. 14, §002.43, Rev. 3/15/09.

³⁷ NAC Title 350, ch. 14, §002.47, Rev. 3/15/09.

³⁸ Exhibits 19-20.

Area 8,³⁹ an area of Southeastern Nebraska that does not include Lancaster County. He noted that Lancaster County is included in Area 5.⁴⁰ McAllister acknowledged that the agricultural land of Area 5 was superior to the agricultural land of Area 8.

On this point, Ogden testified that much of the Area 5 agricultural land was significantly superior to the Subject Property and therefore not comparable to the Subject Property. Ogden gave his opinion that the uninfluenced sales utilized by the Assessor were the most comparable to the Subject Property.

McAllister asserted that the Assessor's use of the sales of uninfluenced agricultural land violated State law. We disagree. In order to determine the uninfluenced value of the Subject Property for purposes of a special valuation assessment, the Assessor is required to use sales from neighboring counties if all agricultural land sales within Lancaster County have been determined to reflect selling prices that have been influenced by purposes and uses other than agricultural and horticultural.⁴¹

With respect to the special valuation assessment, we find that the Assessor properly determined that all agricultural sales in Lancaster County were influenced and then correctly utilized the most comparable uninfluenced sales from other counties to determine the base rates for each land category.

We also find that the number of agricultural acres on the Subject Property per land category utilized by the County Board in making its determination for tax year 2011 and stipulated to by the parties for tax year 2012 was appropriate.⁴² Since the Taxpayer offered no evidence to dispute the base rate for each land category for tax years 2011 or 2012, we find that the special valuation for the agricultural land for tax year 2011 should be as follows:

³⁹ NAC Title 350, ch. 14, §003.01H, Rev. 3/15/09.

⁴⁰ NAC Title 350, ch. 14, §003.01E, Rev. 3/15/09.

⁴¹ NAC Title 350, ch. 11, §005.02A, Rev. 3/15/09.

⁴² For tax year 2011, the County Board determined that the agricultural land that qualified for special valuation consisted of 8.32 acres of Dry Land, 5.49 acres of Grass Land, and 3.44 acres of Waste Land. The parties agreed to the same measures in their stipulation for tax year 2012.

Dry Land	8.32 acres x \$2,800 =	\$23,296
Grass Land	5.49 acres x \$1,400 =	\$ 7,686
Waste Land	3.44 acres x \$100 =	<u>\$ 344</u>
		<u>\$31,326</u>
	x 75% (special valuation ⁴³)	\$23,495

We also find that the special valuation for the agricultural land for tax year 2012 should be as follows:

Dry Land	8.32 acres x \$4,500 =	\$37,440
Grass Land	5.49 acres x \$1,545 =	\$ 8,482
Waste Land	3.44 acres x \$100 =	<u>\$ 344</u>
		<u>\$46,266</u>
	x 75% (special valuation ⁴⁴)	\$34,700

2. Site Value

Ogden testified that the Assessor inspected the Subject Property in order to make determinations regarding the areas of home site, farm home site, and farm site present on the Subject Property. He stated that the Assessor determined that the Subject Property included a residence, and that any other improvements (outbuildings) present on the Subject Property were not agricultural in nature.⁴⁵ Ogden testified that the Assessor concluded after the inspection that none of the outbuildings were used for agricultural purposes. Ogden concluded that the Subject Property did not include a farm site or a farm home site. He testified that the Assessor determined that the site associated with the residence and outbuildings should be valued as a home site.

Ogden stated that the Subject Property home site was assessed with similar home sites as part of neighborhood 3300.⁴⁶ He explained that these home sites ranged in size from one to five acres and that all home sites were valued at \$58,500 for tax year 2011⁴⁷ and \$45,000 for tax year 2012.⁴⁸

⁴³ Neb. Rev. Stat. §77-201(3) (Reissue 2009)

⁴⁴ Id.

⁴⁵ McAllister disputed this conclusion. He testified that the Subject Property contained a chicken coop that was being used for agricultural purposes.

⁴⁶ See also, E3:8.

⁴⁷ See also, E3:8.

⁴⁸ See also, E4:4.

In these appeals, the evidence indicates that the assessment was based, at least in part, on the inspection done by the Assessor. There is a presumption that the assessing official has performed his or her duties according to law.⁴⁹

We find that the Taxpayer did not produce competent evidence to rebut the presumption in favor of the determination by the Assessor that the outbuildings were not agricultural in nature, nor was there any evidence that the taxable value of the home site should be any less than \$58,500 for tax year 2011 or \$45,000 for tax year 2012.

V. CONCLUSION

In Case No. 11A-167, 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 appeal of the determination of the County Board should be affirmed.

In Case No. 11A-168, the Commission finds that there is 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 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 should be vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2011 is affirmed.
2. The decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2012 is vacated and reversed.⁵⁰

⁴⁹ See, *State ex rel. Bee Building Co. v. Savage*, 65 Neb. 714 (1902); *Woods v. Lincoln Gas & Electric Co.*, 74 Neb. 526 (1905); *Brown v. Douglas Co.*, 98 Neb. 299 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709 (1955); *Collier v. Logan County*, 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415 (1965).

3. The taxable value of the Subject Property for tax year 2011 is as follows:

\$23,500	Agricultural and Horticultural Land (Special Valuation)
\$58,500	Home Site
<u>\$47,500</u>	Residential Improvement
\$129,500	Total

4. The taxable value of the Subject Property for tax year 2012 is as follows:

\$34,700	Agricultural and Horticultural Land (Special Valuation)
\$45,000	Home Site
<u>\$60,000</u>	Residential Improvement
\$139,700	Total

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2011 and 2012.
9. This Decision and Order is effective for purposes of appeal on April 4, 2013.

Signed and Sealed: April 4, 2013

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 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

⁵⁰ Assessed 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.