

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brian J. McAllister,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee,

Case Nos: 11A-168 & 12A-110

Decision and Order Affirming the
Determinations of the Lancaster County
Board of Equalization

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 20.05 acre unimproved agricultural land parcel located 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 8-11, and Exhibit 4, pages 5-7.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (Assessor) determined that the assessed value of the Subject Property was \$37,100 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 \$37,100.²

¹ E1:1.

² E1:1.

The Assessor determined that the assessed value of the Subject Property was \$52,200 for tax year 2012.³ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2012 was \$52,200.⁴

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged 27 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 Commission held a consolidated hearing⁵ on March 22, 2013.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁶ 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."⁷

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.⁸

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

³ E2:1.

⁴ E2:1.

⁵ For purposes of creating a common procedural record, and for the purpose of avoiding duplication in testimony, the Commission took notice of the common record and the record for another consolidated hearing, Case No's 11A-167 and 12A-109, heard on the same date and involving the same parties and witnesses.

⁶ 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).

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

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

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹¹ 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.¹²

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.”¹³ 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.”¹⁴

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.¹⁵

“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.”¹⁶ The Courts have held that “[a]ctual

⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹³ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ *Id.*

value, market value, and fair market value mean exactly the same thing.”¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰ “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²¹

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.²²

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 77-1343.²³

“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.”²⁴

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 land, may be used for market comparison in determining the special valuation

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-132 (Reissue 2009).

²² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-201(3) (Reissue 2009).

²⁴ NAC Title 350, Chapter 11, §005.01, Rev. 3/15/09.

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.²⁵

“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.”²⁶

Agricultural land and horticultural land that may be classified as wasteland includes:

land that cannot be used economically and are not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts, which are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification.²⁷

B. Summary of the Evidence

The Taxpayer argued that the Subject Property was not valued appropriately or correctly in several 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), 2) that the Assessor should have counted and assessed more acres as wasteland and fewer acres as agricultural land, and 3) that the Subject Property should have been assessed at a lower value due to the fact that it was land locked.

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

²⁵ NAC Title 350, ch. 11, §005.02, Rev. 3/15/09.

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

²⁷ NAC Title 350, ch. 14, §002.54A, Rev. 3/15/09.

1. Special Valuation

Ogden testified²⁸ that all agricultural land in Lancaster County is classified as special valuation land since its value is deemed to be influenced²⁹ 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 2011³⁰ and 2012³¹ based upon the applicable three year sales study period.³²

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 Areas³³ and Market Area.³⁴ McAllister testified that all of the sales of uninfluenced agricultural land used by the Assessor³⁵ were from Area 8,³⁶ an area of Southeastern Nebraska that does not include Lancaster County. He noted that Lancaster County is included in Area 5.³⁷ 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.

²⁸ Ogden's testimony regarding the special valuation methodology is found in the record of Case No's 11A-167 and 12A-109.

²⁹ For the Regulatory meaning and application of the terms "influenced" and "uninfluenced," see NAC Title 350, ch. 11, §005, Rev. 3/15/09.

³⁰ Exhibit 12.

³¹ Exhibit 11.

³² See also, Title 350, ch. 12, §003.07A(3), Rev. 3/15/09.

³³ Title 350, ch. 14, §002.43, Rev. 3/15/09.

³⁴ Title 350, ch. 14, §002.47, Rev. 3/15/09.

³⁵ Exhibits 19-20.

³⁶ Title 350, Chapter 14, §003.01H, Rev. 3/15/09.

³⁷ Title 350, Chapter 14, §003.01E, Rev. 3/15/09.

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.³⁸

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.

2. Wasteland

The Assessor valued the Subject Property as having 2.49 acres of wasteland.³⁹ The Taxpayer asserted that the Subject Property should have been assessed as having 5.18 acres of wasteland. The County Board provided copies of Farm Services Agency (FSA) aerial maps and Report of Commodities.⁴⁰ The FSA maps and reports indicate 17.53 acres of agricultural land (cropland) and 2.24 acres of wasteland.⁴¹

Robert Ogden testified that the Assessor utilized a Geographic Information System (GIS) aerial map⁴² to determine that the Subject Property had 2.49 acres of wasteland. After reviewing the FSA maps during this hearing, Ogden maintained his opinion that no more than 2.49 acres of the Subject Property should be classified as wasteland.

After reviewing the relevant evidence, we are persuaded that the County Board properly determined the number of agricultural land acres when making its determinations of value of the Subject Property for both tax years.

³⁸ Title 350, ch. 11, §005.02A, Rev. 3/15/09.

³⁹ E3:10, E4:7.

⁴⁰ E3:19-20, E4:10-12.

⁴¹ E3:19-20, E4:10-12. FSA payments appear to have been based upon 17.53 acres of cropland. It also appears that the Taxpayer is asserting that despite the FSA calculations and payments, fewer acres of the Subject Property should be assessed as agricultural land (cropland) for property tax purposes than for FSA payment purposes.

⁴² E8:1.

3. Land Lock

The Taxpayer asserted that the Subject Property was land locked, and therefore should be assessed at a lower value. Brian McAllister testified that there was an agreement with a producer to farm the agricultural land on the Subject Property. He also testified that the agricultural land had been in row crops for many years, and that the same producer had been given permission by a relative of the Taxpayer to cross another parcel in order to access the Subject Property for the purposes of farming the agricultural land.

Robert Ogden testified that the Assessor had determined the presence of crops in the agricultural land by visual inspection and by the use of GIS maps.⁴³ He also explained that the property record card identified the Subject Property as being land locked,⁴⁴ but that since the agricultural land continued to have crops the effect of the land lock was negligible and was determined to have no effect on market value.

Ogden gave his opinion that the market value of the Subject Property was \$37,100 for tax year 2011 and \$52,200 for tax year 2012. The Commission finds that Ogden's opinion is to be given significant weight, and we are not persuaded that the market value of the Subject Property should be reduced due to its location (land lock) for tax years 2011 or 2012.

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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable. For all of the reasons set forth above, the appeals of the determinations of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2011 and 2012 are affirmed.

⁴³ See, e.g., E8:1.

⁴⁴ E3:8, E4:5.

2. The taxable value of the Subject Property for tax year 2011 is \$37,100.
3. The taxable value of the Subject Property for tax year 2012 is \$52,200.
4. 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.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2011 and 2012.
8. 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.