

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lola Gadeken Estate & John A. Gadeken,
Executive Co-Trustee, Arnold W. Gadeken
Residuary Trust,
Appellants,

v.

Kimball County Board of Equalization,
Appellee.

Case Nos: 11A-054 & 11A-055

Decision Affirming Kimball County Board
of Equalization

For the Appellant:

John A. Gadeken,
Personal Representative of Lola Gadeken Estate
& Executive Co-Trustee of Arnold W. Gadeken
Residuary Trust,
Pro Se.

For the Appellee:

David L. Wilson,
Kimball County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property includes a 631.25 acre parcel improved with a residence and outbuildings in Case No. 11A-054 and a 652.95 acre unimproved parcel in Case No. 11A-055. The Subject Property is located in Kimball County, Nebraska. The legal description of each parcel is found on the Property Record Card at Exhibit 3 for each case.

II. PROCEDURAL HISTORY

The Kimball County Assessor determined that the assessed value of the Subject Property was \$242,455 (Case No. 11A-054) and \$107,470 (Case No.11A-055) for tax year 2011. The Lola Gadeken Estate protested the assessment in Case No. 11A-054 to the Kimball County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$203,300. John A. Gadeken, Executive Co-Trustee of the Arnold W. Gadeken Residuary Trust (The Lola Gadeken Estate and the Arnold W. Gadeken Residuary Trust are herein sometimes referred to separately or collectively as the “Taxpayer”) protested the assessment in Case No.

11A-055 to the County Board and requested an assessed valuation of \$96,045. The County Board determined that the assessed value for tax year 2011 was \$242,455 (11A-054) and \$107,470 (11A-055).¹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission consolidated the two cases at the hearing held on July 24, 2012.

III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.² 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.”³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ E1.

² 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).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *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.⁷ 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.⁸

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.”⁹ 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.”¹⁰

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.¹¹

“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.”¹² The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹³ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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

¹⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

and has the same meaning as assessed value.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

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.¹⁷

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”¹⁸

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.¹⁹

B. Summary of the Evidence

The Taxpayer's Appeal to the Commission in Case No. 11A-054 states as follows: "Non-proportional jump from 2010 assessment to 2011. USDA requires refund of CRP rental payments 1997-2009, therefore, CRP lands in span of 1997-2009 drop from Conservation Reserve land to grass, mistake in 2009 assessment and evaluation due to changes in county soil survey."

The Taxpayer's Appeal to the Commission in Case No. 11A-055 states as follows: “USDA is requiring refund of all CRP rental payments for period 1997-2009, therefore, CRP lands in

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-132 (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

span of 1997-2009 drop from CRP land to grass. Mistake in 2009 assessment and equalization due to changes in soil survey."

John A. Gadeken, Personal Representative of Lola Gadeken Estate and the Executive Co-Trustee of Arnold W. Gadeken Residuary Trust, testified on behalf of the Taxpayer. The Commission received Mr. Gadeken's written statement in evidence as Exhibit 6. The Commission also received Exhibit 5 submitted by Mr. Gadeken in evidence.

Debora Huff, the Kimball County Assessor, testified on behalf of the County Board. The Commission received Exhibits 1 through 4 submitted by the County Board in evidence.

C. Tax Years 1997-2009 Analysis – Case Nos. 11A-054 & 11A-055

The Taxpayer acknowledged that a protest of the valuation of the Subject Property identified in each consolidated appeal was not filed with the County Board for any of the tax years 1997 through 2009. Nonetheless, the Taxpayer asserts that case law and due process support his contention that the Commission has jurisdiction to consider the merits of its claim that the parcel in each respective appeal consolidated herein was not assessed correctly for the tax years 1997 through 2009.

Nebraska Statutes section 77-5013 provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.²⁰ Any action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.²¹ Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.²²

Nebraska Statutes section 77-1502 required the filing of a protest for each parcel with the County Board by June 30th of each tax year in the period 1997-2009.²³ The Taxpayer admits that

²⁰ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

²¹ Neb. Rev. Stat. §77-1510 (Reissue 2009).

²² *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

²³ Neb. Rev. Stat. 77-1502 (2012 Cum. Supp.).

a protest in connection with the 1997-2009 assessed valuations of each parcel consolidated for appeal herein was not filed with the County Board by June 30th of each respective tax year.

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.²⁴ Additionally, “if the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”²⁵ Therefore, because the Taxpayer did not file a protest with the County Board for the 1997-2009 tax years by June 30th of each year, the County Board did not have jurisdiction to hear the respective protests, and it follows that the Commission does not have jurisdiction.

D. Tax Year 2011 Analysis – Case No. 11A-054

The Taxpayer asserted that the Subject Property sustained a “non-proportional” increase in the assessment of the parcel from 2010 to 2011. This assertion stems from the County’s valuation of 510.77 acres of the Subject Property as Conservation Reserve Program (“CRP”) land in tax year 2011 as compared to lower value grassland in tax year 2010.²⁶

The Taxpayer’s Appeal to the Commission states that a portion of the Subject Property qualified as CRP land until revocation effective for tax years 1997-2009 occurred. Additionally, the Commission notes that the United States Department of Agriculture informed John Gadeken regarding revocation of the Subject Property’s CRP status under cover of letter dated October 9, 2008.²⁷ As a result of CRP status revocation for tax years 1997-2009, the County valued at least 510.77 acres of the Subject Property as grassland in tax year 2010.²⁸

With respect to tax year 2011, however, the County determined through “Pickup” work that 510.77 acres of the Subject Property obtained renewed CRP status through 2020.²⁹ As a result, the evidence shows that the County valued these acres as higher value CRP land on an equalized basis with other CRP land in Market Area 3.³⁰ Therefore, the Commission finds that the Taxpayer’s assertion regarding “non-proportional” increase in the assessment of the parcel from 2010 to 2011 does not have merit. The Commission has also considered the contentions of the

²⁴ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

²⁵ *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).

²⁶ See, E1:2; E3:4; E5:1; E5:2; E5:4.

²⁷ E5:36.

²⁸ E5:4.

²⁹ E1:2; E3:4.

³⁰ E1:2; E3:16; E5:1.

Taxpayer outlined in Exhibit 6 and finds they are without merit with respect to Case No. 11A-054.

E. Tax Year 2011 Analysis – Case No. 11A-055

The Taxpayer's Appeal to the Commission states as follows in pertinent part: "Mistake in 2009 assessment and equalization due to changes in soil survey." Thus, while not clear, it appears the Taxpayer asserts that soil survey changes, which possibly occurred in 2009, resulted in an overvaluation of the Subject Property by the County Board for tax year 2011.

The "Assessor's Recommendation" relied upon by the County Board states as follows in pertinent part in response to the Taxpayer's assertion: "The FSA terminated taxpayer's CRP contracts in 2008. Taxpayer needed to protest 2009 valuation in 2009, etc. The subject property is currently valued as grassland, not CRP."³¹ Therefore, in light of the fact that Subject Property is categorized as lower value grassland as compared to CRP land, and based on a review of the testimony and Exhibits received in evidence at the hearing, the Commission finds that the Taxpayer did not adduce clear and convincing evidence to support its assertion that the County Board's determination for tax year 2011 exceeded actual value. The Commission also has considered the Taxpayer's assertions outlined in Exhibit 6 and finds they are without merit with respect to Case No. 11A-055.

V. EQUALIZATION

A. Law

"Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."³² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³³ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.³⁴ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to

³¹ E1:2; E2:1.

³² *Neb. Const.*, Art. VIII, §1.

³³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

market value for both the subject property and comparable property is required.³⁵ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.³⁶ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.³⁷ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁸ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his [or her] property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].³⁹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁰

B. Summary of the Evidence

Based on the analysis and findings discussed above, the Commission finds that the Taxpayer has not adduced clear and convincing evidence that the County Board’s determinations in Case Nos. 11A-054 and 11A-055 violated equalization principles.

VI. 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 by the Taxpayer are denied.

VII. ORDER

IT IS ORDERED THAT:

³⁵ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁷ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³⁸ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁰ *Id.* at 673, 94 N.W.2d at 50.

1. The decisions of the Kimball County Board of Equalization determining the value of the Subject Property for tax year 2011 are affirmed.⁴¹
2. The assessed value of the Subject Property for tax year 2011 is: \$242,455 (Case No. 11A-054) and \$107,470 (Case No. 11A-055)
3. This decision and order, if no appeal is timely filed, shall be certified to the Kimball County Treasurer and the Kimball County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 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 2011.
7. This order is effective for purposes of appeal on November 8, 2013.

Signed and Sealed: November 8, 2013.

Thomas D. Freimuth, 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.), other provisions of Nebraska Statute and Court Rules.

⁴¹ 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.