

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shelly A. Hansen,
Appellant,

v.

Brown County Board of Equalization,
Appellee.

Case No: 12R 186

Decision and Order Affirming the
Determination of the Brown County Board
of Equalization

For the Appellant:

Shelly A. Hansen,
Pro Se.

For the Appellee:

David M. Streich,
Brown County Attorney.

The appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 46.16 acre parcel located in Brown County, Nebraska. The legal description of the Subject Property is found at Exhibit 5, page 2. The property record card for the Subject Property is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Brown County Assessor determined that the assessed value of the Subject Property was \$75,070 for tax year 2012. Shelly A. Hansen (the Taxpayer) protested this assessment to the Brown County Board of Equalization (the County Board) and requested an assessed valuation of \$13,071. The Brown County Board determined that the taxable value for tax year 2012 was \$75,070.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 10, 2013.

¹ E1

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

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

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).

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).

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 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.

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

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

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).

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...¹⁹

B. Summary of the Evidence

The Taxpayer purchased the Subject Property on December 29, 2011, for \$136,000.²⁰ Prior to December 30, 2010, the Subject Property had been part of a 240 acre agricultural parcel used for grazing cattle. On December 30, 2010, the 240 acre parcel was subdivided into seven parcels.²¹ The subdivided parcels ranged in size from 7.7 acres to 87.50 acres.²² Sales of these seven parcels occurred between December 30, 2010, and December 28, 2011.²³

The Taxpayer constructed a barn and a two-stall garage on the Subject Property in May and June of 2012, and moved an older home onto the Subject Property on May 24, 2012. An addition was built onto the back of the house in October 2012. The house became habitable in November 2012, but the Taxpayer never occupied the home. The Taxpayer sold the Subject Property as improved in April or May of 2013.²⁴

Shelley Hansen testified that the Subject Property was purchased in December 2011 with the intention to allow agricultural uses, the grazing of cattle, and to “let it sit for a while,” until her son graduated from high school and she and her husband could then build a home for permanent residence. Hansen testified that at the time of the purchase of the Subject Property on December 28, 2011, she was not aware of the market value of agricultural land in Brown County.

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).

²⁰ E4:3, 8-9. The purchase was made just three days prior to the effective date in this appeal. The purchase was for land only; no improvements existed on the Subject Property as of January 1, 2012.

²¹ See, E6:40 (aerial map of 240 acre parcel and seven subdivided parcels).

²² E6:41.

²³ *Id.*

²⁴ The improved Subject Property then sold for \$360,000.

Hansen testified that the Hansens made an oral agreement with an adjacent cattle owner in which the adjacent owner would construct permanent fencing on the Subject Property in consideration for the Hansens granting him a right to graze cattle on the Subject Property and a right to hay the Subject Property. Grazing had occurred on the Subject Property prior to December 28, 2011, and, under the oral agreement, it continued until November 2012. The oral “lease” agreement involved no cash payments, but rather was an in-kind agreement. Other than grazing cattle and haying, no other agricultural activity was conducted on the Subject Property in 2011 or 2012.

Hansen testified to her belief that the Subject Property and the other six subdivided properties should not be considered as a subclass or neighborhood for assessment purposes. She also asserted that the Subject Property should be classified as agricultural land because she and her husband had worked the land in early 2012 by removing tree stumps, clearing some trees, removing some abandoned fence wire, and seeding and fertilizing some of the grass.

Dean Jochem testified on behalf of the County Board.²⁵ He opined that based upon the number of acres and grass production available the carrying capacity of the 46.16 acre Subject Property was 2.8 cow/calf pairs. He testified that the standard rent rate in Brown County in 2011 and 2012 was \$200 per cow/calf pair. Jochem further testified that in Brown County a single cow/calf pair requires at least 10 acres of 4G grassland to support the livestock.

Jochem further testified that the purchase price paid by the Hansens on December 28, 2011, of \$136,000 was far more than what was being paid in the market for agricultural grassland in Brown County. He opined that for \$136,000 a buyer could have purchased 160 acres of sandhills grassland in 2012. Jochem also testified that the Subject Property’s soil was classified as type 4G, and he characterized that soil as having significant limits due to erosion. Jochem asserted that this soil could not be cultivated or overgrazed without significant erosion occurring.

Charlene Fox, the Brown County Assessor, also testified on behalf of the County Board.²⁶ She explained that when the actual value of the Subject Property was calculated as agricultural land as of January 1, 2011, the actual value of the property was \$12,993. She testified that when

²⁵ Jochem’s credentials are found in Exhibit 2.

²⁶ Fox has been employed with the Brown County Assessors Office for 30 years; including 13 years as Deputy County Assessor and 13 years as Treasurer.

she reviewed the seven sales shown at Exhibit 6, page 41, she determined that all seven of the sales were at amounts substantially in excess of recent agricultural grassland sales in Brown County. Fox testified that she evaluated the seven sales and determined that all seven parcels needed to be reclassified as rural residential because of the subdividing of the 240 acre parcel and the highest and best use of each parcel.

Fox testified that she evaluated the parcels and determined that no residential improvements had been added to them as of January 1, 2012. She testified that the seven parcels shared certain characteristics: the same creek and canyon ran continuously through the subdivided parcels;²⁷ each had a significant amount of tree cover; and each shared a similar aesthetic value as rural residential living with creek frontage. Fox testified that she had concluded that something other than agricultural use or intended agricultural use was “driving the sales” of these seven parcels. In her opinion, each of the seven parcels, as subdivided, would have little to no potential for commercial agricultural production.

Fox testified that after reclassifying the seven subdivided parcels as rural residential, she placed a first acre value on each parcel at \$10,000, with excess acre values at \$1,000 per acre or \$1,500 per acre depending upon the amount of creek frontage. Fox opined that because of the characteristics of these parcels, their highest and best use was rural residential.

The Commission finds that as of January 1, 2012, the highest and best use of the Subject Property was rural residential, as fewer than three cow/calf pairs could economically graze the land. The Commission also finds that as of January 1, 2012, the Subject Property was not primarily used as commercial agricultural, but that the Subject Property was property classified as rural residential.

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

²⁷ See aerial map at E6:40.

Constitution.”²⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁹ 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.³⁰ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.³¹ 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.³² 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.³³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁴ 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].”³⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁶

B. Summary of the Evidence

Shelley Hansen asserted that the Subject Property should not be compared to properties two miles away, in an area known as Hidden Paradise. As noted above, Charlene Fox testified that the Subject Property was compared to the six other sales from the same subdivision. No evidence was presented in the appeal to indicate a violation of the Uniformity Clause of the Nebraska Constitution.³⁷

²⁸ *Neb. Const.*, Art. VIII, §1.

²⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁰ *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).

³¹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³³ *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).

³⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁶ *Id.* at 673, 94 N.W.2d at 50.

³⁷ Article VIII, Section 1.

VI. CONCLUSION

The Commission finds that there is no 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 determination of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Brown County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.³⁸
2. The taxable value of the Subject Property for tax year 2012 is: \$75,070
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Brown County Treasurer and the Brown 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 Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2012.

³⁸ 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.

7. This Decision and Order is effective for purposes of appeal on October 22, 2013.

Signed and Sealed: October 22, 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.