

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

John A. Knapp,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee,

Case No: 12A 020

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

**For the Appellant:**

John A. Knapp,  
Pro Se

**For the Appellee:**

Bonnie N. Moore,  
Deputy Sarpy County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property is an 81.86 acre agricultural parcel improved with a residence located in Sarpy County, Nebraska. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 6.

**II. PROCEDURAL HISTORY**

The Sarpy County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$442,450 for tax year 2012. John A. Knapp (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board). The County Board determined that the taxable value for tax year 2012 was \$442,450.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 31, 2014.

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<sup>1</sup> Exhibit 1.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>2</sup> 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."<sup>3</sup>

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.<sup>4</sup>

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

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>2</sup> 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).

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

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

cross appeal.”<sup>9</sup> 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.”<sup>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### 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.<sup>12</sup>

“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.”<sup>13</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>14</sup> 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.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>17</sup>

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<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## **B. Summary of the Evidence**

John Knapp asserted that the County Assessor had incorrectly determined the assessed value of the farm home site and farm site portions of the Subject Property. He asserted that the County Assessor had used incomparable properties in his assessment model and had failed to take into account important characteristics, including the zoning and permissible uses of the Subject Property. He asserted that his alleged comparable properties were unimproved, more similar to the Subject Property, and a better indicator of the actual value of the Subject Property.<sup>18</sup> Knapp asserted that every acre should be valued the same on the Subject Property and thus gave an opinion of value of \$7,200 per acre for the farm home site and farm site.

Connie Anderson, an individual familiar with the Subject Property, testified that she obtained from the County Assessor the sales files for tax year 2012 as well as a graph illustrating the trend line used to determine the assessed value of the Subject Property's farm home site and farm site.<sup>19</sup> Anderson explained that the County Assessor's land model was based upon sales of properties with more than three acres of land, and that the County Assessor inappropriately extrapolated from the data point with the smallest area to one acre to determine the assessed value of farm home sites in Sarpy County. Anderson asserted that this extrapolation was inherently flawed because the amount of variation between similar data points at the low end of the data indicated that the data was heteroscedastic and that factors other than the area of the Subject Property were causing greater variance as the number of acres associated with a sale decreased.<sup>20</sup>

Anderson asserted that the variance among similarly sized parcels was attributable to the impact of zoning on the parcels.<sup>21</sup> She asserted that the County Assessor's statistical analysis was unreasonable because if the trend line was accepted, then an infinitely small piece of real property would have an infinitely high value.

Timothy Ederer, an employee of the County Assessor, testified that he assessed the Subject Property's farm home site and farm site using commonly accepted mass appraisal techniques that

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<sup>18</sup> See, Exhibits 42-48.

<sup>19</sup> Exhibit 56. Anderson testified that she had knowledge of statistical studies related to her work in scientific labs, however, she had no credentials in the field of the appraisal of real estate.

<sup>20</sup> See, Appraisal Institute, *The Appraisal of Real Estate*, at 747 (14th ed. 2013).

<sup>21</sup> See, Exhibit 57 and Exhibit 55:2.

considered the zoning and all other characteristics associated with the properties. Ederer asserted that according to the principle of diminishing returns, there is an optimal parcel size for any given use and that all land associated with the parcel in excess of this optimal parcel size has a lower actual value. Ederer asserted that for this reason an average sale price for a parcel of real property containing excess land is not a good indication of the value of the farm home site and farm site located on the Subject Property. He further explained that his opinion of the optimal size for a rural residence farm home site was one acre, because 99% of the time a residence could be established on the first acre, but additional acres could not support an additional residence.

Ederer determined that for tax year 2012 the value of the first acre of farm home site was \$58,900 per acre, that the value of acres two through four was \$10,500 per acre, and the value per acre for each of the fifth and subsequent acres was \$7,000. He testified that his greatest concern was with the total actual value of the Subject Property, and he thus focused on the parcel as a whole.

Ederer testified that he developed his values through statistical analysis. He found sales of undeveloped properties outside of sanitary improvement districts, and outside of city limits that were not used for recreational, commercial, or industrial purposes. Using these sales, he developed a trend line for the sale prices compared to the total amount of acres associated with the sold properties. Ederer asserted that the smallest sale qualified to set the base value was three acres. Using his trend line, Ederer then extrapolated the per acre value of one acre of property.<sup>22</sup> Ederer tested his opinion of value for the first acre by running a ratio study<sup>23</sup> and by analyzing sales of improved properties. He performed a land residual technique where a calculated value of improvements is subtracted from the sale price to derive a sale value of the land, and he compared it to his trend line for his first acre value.<sup>24</sup> Ederer asserted that based on his  $R^2$  factor associated with his base value trend line,<sup>25</sup> his ratio study conducted on the base value

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<sup>22</sup> See, Exhibit 9:2.

<sup>23</sup> See, Exhibit 9:1.

<sup>24</sup> See, Exhibit 10.

<sup>25</sup> See, Exhibit 9:2. The  $R^2$  factor, also known as the coefficient of determination, indicates the explanatory power of a single independent variable (in this case, area) of variance of a single dependent variable (in this case, actual value). See, Appraisal Institute, *The Appraisal of Real Estate*, at 733-734 (14th ed. 2013). The  $R^2$  factor may range from 0 to 1, “with 0 indicating no explanatory power whatsoever and 1 indicating perfect explanatory power (i.e., a deterministic model).” *Id.* at 734.

measurements,<sup>26</sup> and his analysis using land value residuals,<sup>27</sup> he determined that the base values developed through his statistical analysis were appropriate measures of value.

Ederer asserted that he made adjustments to properties closer to cities or in rural subdivisions to account for differences in value.<sup>28</sup> He also testified that the Subject Property had not received any adjustments from the base value. After adjustments were assigned to properties, Ederer ran a second overall ratio study to ensure that his opinions of value fell within statutory requirements.<sup>29</sup>

Ederer asserted that some of the Taxpayer's alleged comparable properties were not truly comparable to the Subject Property, and that Anderson's statistical analysis of his model was flawed because it did not incorporate adjustments to some sales.

### **C. Analysis**

The Taxpayer's opinion of value was based upon the average sale price of multiple acre parcels. The principle of diminishing returns indicates that not all acres in a property have the same value, but when the area exceeds the optimal size of the parcel for the given use, subsequent acres will have less value than the acres associated with the optimal parcel size.<sup>30</sup> The Commission therefore gives the Taxpayer's opinion of value little weight.

Anderson disputed the County Assessor's statistical analysis and her own analysis indicated a different farm home site value. However, Anderson's analysis was not supported by land value residuals or ratio studies. In fact, the Commission is unable to determine whether Anderson's analysis supported a separate opinion of value for subsequent acres of farm site. The Commission finds that Anderson's analysis of the value of the first acre of a farm home site is a mere difference of opinion as compared to the valuation done by the County Assessor. The Commission finds that Anderson's analysis is not clear and convincing evidence that the County

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<sup>26</sup> See, Exhibit 9:1.

<sup>27</sup> See, Exhibit 10.

<sup>28</sup> See, Exhibit 8:6.

<sup>29</sup> Exhibit 8:6.

<sup>30</sup> See, Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013) ("Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel."). See also, Appraisal Institute, *The Appraisal of Real Estate*, at 32 (14th ed. 2013) (defining the law of decreasing returns also known as the law of diminishing returns).

Board's opinion of value, which relied upon the County Assessor's valuation, was arbitrary or unreasonable.<sup>31</sup>

The Commission recognizes that Ederer's opinion of value for farm home sites and farm sites relies heavily on extrapolation. The Commission is mindful that Ederer's data also does not include sales of parcels that were smaller than three acres that would be appropriate to determine the base value.<sup>32</sup> Nebraska Statutes effective as of the date of assessment required the County Assessor to limit the size of farm home sites to a single acre.<sup>33</sup> Ederer sought to support his opinion of the value of farm home sites with multiple ratio studies, statistical analysis, and even a land residual value analysis. Given the foregoing, the Commission finds that it was reasonable and not arbitrary for the County Board to adopt the County Assessor's opinion of value.

The Commission notes that there may be other reasonable ways to allocate values between the farm home site and farm site acres associated with an agricultural and horticultural parcel. The assessment or appraisal of real property is not an exact science.<sup>34</sup> It is possible for reasonable minds to disagree about the actual value of real property. However, a mere difference of opinion is not clear and convincing evidence.<sup>35</sup>

## V. CONCLUSION

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 not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be affirmed.

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<sup>31</sup> See, *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (hold that a mere difference of opinion is not sufficient to establish clear and convincing evidence).

<sup>32</sup> See, Exhibit 8. It is important to note that neither party asserted that such sales were omitted from consideration; rather, no such sales occurred during the relevant timeframe.

<sup>33</sup> See, Neb. Rev. Stat. §77-1359(3) (Reissue 2009) ("Farm Home Site means not more than one acre of land contiguous to a farm site, which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road.").

<sup>34</sup> See, *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

<sup>35</sup> See, *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008).

**VI. 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 2012 is affirmed.
2. The taxable value of the Subject Property for tax year 2012 is \$442,450.
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 (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.
7. This Decision and Order is effective for purposes of appeal on August 29, 2014.

Signed and Sealed: August 29, 2014

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Robert W. Hotz, Commissioner

SEAL

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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.