

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jean G. Vinduska, Trustee,
Jean G. Vinduska, Rev. Trust,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 11A-045

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

For the Appellant:

Jarel G. Vinduska, Co-Trustee of
Jean G. Vinduska Revocable Trust

For the Appellee:

Bonnie Moore,
Deputy Sarpy County Attorney
John Reisz,
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 a 148.70 acre agricultural parcel located at 19506 S. Highway 31 in Sarpy County, Nebraska, improved with two residences and two outbuildings. The Subject Property is qualified for special valuation. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 4 and Exhibit 32.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$341,239 for tax year 2011.¹ Jean G. Vinduska, Trustee of the Jean G. Vinduska Revocable Trust (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested a taxable value of \$241,951.² The County Board determined that the taxable value for tax year 2011 was \$320,552.³ This determination consisted of \$120,202 for

¹ E1:1.

² E3:2.

³ E1:1.

the two houses,⁴ \$4,464 for the two outbuildings,⁵ \$120,916 for 145.57 acres of agricultural land with special valuation,⁶ \$19,170 for 2.13 acres of farm site,⁷ and \$55,800 for one acre of a farm home site.⁸

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on January 30, 2014.

III. STANDARD OF REVIEW

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.”⁹

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.¹⁰

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.¹¹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹²

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

⁴ E1:1. See also E4:2-3, E4:10.

⁵ E4:3.

⁶ E4:5-6.

⁷ E4:5.

⁸ E4:5.

⁹ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁰ *Id.*

¹¹ Neb. Rev. Stat. §77-5016(9) (2012 Cum. Supp.).

¹² *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ 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).

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.¹⁴

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.”¹⁵ 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.”¹⁶

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.¹⁷

"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."¹⁸ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁹ 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.²⁰ All real property in [Nebraska] subject to

¹⁴ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²²

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.²³ Agricultural land and horticultural land means a parcel of land²⁴ which is primarily used for agricultural or horticultural purposes,²⁵ including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.²⁶ Agricultural land and horticultural land does not include any land associated with any building or enclosed structure located on the parcel.²⁷

“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.”²⁸ “Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.”²⁹

“Real property shall mean all land, buildings, fixtures other than trade fixtures, improvements, certain mobile homes, cabin trailers and similar property, mineral interests, and all privileges pertaining to real property.”³⁰

B. Summary of the Evidence

The Subject Property parcel consists of four components: (1) improvements, consisting of two residences and two outbuildings, (2) 145.57 acres of agricultural land and horticultural land receiving special valuation, (3) a “farm site,” and (4) a “farm home site.” At the hearing on this

²¹ See, Neb. Rev. Stat. §77-1301(1) (2012 Cum. Supp.).

²² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

²⁴ A parcel of land means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Neb. Rev. Stat. §77-132(Reissue 2009).

²⁵ 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. Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²⁶ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). Section 77-1359 has been amended since the effective date of January 1, 2011. The Commission will apply the statute as it existed as of January 1, 2011 to resolve this appeal.

²⁷ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁸ Neb. Rev. Stat. §77-1359 (3) (Reissue 2009).

²⁹ Neb. Rev. Stat. §77-1359 (4) (Reissue 2009).

³⁰ Title 350 Neb. Admin. Code ch. 10 §001.01(3/09).

appeal, the Taxpayer did not dispute the valuation of any of the improvements or the valuation of the agricultural land receiving special valuation. The only issue in dispute is the valuation of the 3.13 site acres. All of the improvements are located on these site acres.

The County Board determined that of these 3.13 acres, 2.13 acres were a “farm site,”³¹ and one acre was a “farm home site.”³² In other words, since the non-residential improvements were agricultural and horticultural in nature, the 2.13 acres were deemed to be “farm site” acres because they were contiguous to the remainder of the parcel which was actively devoted to agriculture, and the one acre was deemed to be a “farm home site” because it contained an inhabitable residence and was land contiguous to a “farm site.”

Jarel Vinduska testified on behalf of the Taxpayer. He testified that the Taxpayer disagreed with the classification of the site acres as “farm site” and “farm home site.” He asserted that the 3.13 acres should instead be valued on a per acre basis, combined with the agricultural and horticultural acres of the parcel. Vinduska opined that since the market value of all of the land of the Subject Property was \$890,226,³³ each of the 148.70 acres of the parcel, including the 3.13 acres associated with the improvements, should be valued at \$5,987.³⁴ He further alleged that the valuation model used by the Assessor and relied upon by the County Board to determine the taxable value of the “farm site” and the “farm home site” was unreasonable and arbitrary.

The Taxpayer alleged that the determination of the County Board was arbitrary or unreasonable because the rural land valuation model (the Model)³⁵ developed by the Assessor was flawed. Vinduska called Tim Ederer, an employee of the Assessor, to explain the Model. Ederer testified that he had been an appraiser with the Assessor since 2004 and that he held a State Assessor Certificate.³⁶ Ederer testified that he had been responsible for the assessment of the Subject Property for tax year 2011.

Ederer testified that a 2011 Rural Land Model³⁷ was used to value the land components of the Subject Property for tax year 2011. He testified that the Rural Land Model was based upon

³¹ Neb. Rev. Stat. §77-1359 (4) (Reissue 2009).

³² Neb. Rev. Stat. §77-1359 (3) (Reissue 2009).

³³ See E4:5-6.

³⁴ Vinduska’s calculation is as follows: $\$890,226 / 148.70 = \$5,987$.

³⁵ See E16, 2011 Rural Land Model.

³⁶ Neb. Rev. Stat. §77-422 (Reissue 2009).

³⁷ Exhibit 16:1.

the economic theory of marginal utility.³⁸ Ederer testified that the principles of the Rural Land Model were further explained by Exhibit 7. He explained that only sales that were not assigned a “market adjustment” were used to establish the base Rural Land Model values.³⁹ According to Ederer, the Subject Property received a 10% negative market adjustment because it was located on a busy county highway. In other words, according to the Rural Land Model, the one acre “farm home site” was valued at \$55,800 rather than at \$62,000,⁴⁰ and the 2.13 acre “farm site” was valued at \$9,000 per acre rather than at \$10,000 per acre.⁴¹ Ederer gave his opinion that the Subject Property, including all of its components was valued at its highest and best use⁴² as of the effective date, January 1, 2011, at \$320, 552.

The Taxpayer’s assertion that the 3.13 acres associated with the improvements should be valued on a per acre basis, combined with the agricultural and horticultural acres of the parcel is without merit. To do so would be to disregard the Legislature’s intent that a “farm site” and a “farm home site” be classified separately from the agricultural land and horticultural land of the parcel. It is undisputed in the evidence that there existed on the parcel on January 1, 2011, two residences and two outbuildings. And there was no evidence presented contrary to the conclusion that the non-residential improvements were agricultural and horticultural in nature, and that the 2.13 acres were contiguous to the remainder of the parcel which was actively devoted to agriculture. There was also no evidence that the one acre did not contain an inhabitable residence and was land contiguous to a “farm site.” The Commission therefore finds that the County Board did not err when it classified the 2.13 acres as “farm site,” and the one acre as “farm home site” as required by law.⁴³ Further, the Commission finds that there is no

³⁸ “Marginal utility” is defined as, “[t]he increment of total utility added by the last unit of a good at any given point of consumption. In general, the greater the number of items, the lower the marginal utility, i.e., a greater supply of an item or product lowers the value of each item.” Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 173 (4th ed. 2002).

³⁹ Exhibit 16:6. The only sales used for this purpose were identified in the eleventh column from the left with a “MKT ADJ” of 1.

⁴⁰ According to the Rural Land Model at Exhibit 16, page 1, one acre, the size of the Subject Property “farm home site,” carried a value of \$62,000. The Subject Property “farm home site” was assessed and valued at \$55,800 per Exhibit 4, page 5 (\$62,000 minus 10% equals \$55,800).

⁴¹ According to the Rural Land Model at Exhibit 16, page 1, each acre of the second third and fourth acres carried a value of \$10,000 per acre. The Subject Property “farm site” was assessed and valued at \$9,000 per acre, a 10% reduction, per Exhibit 4, page 5.

⁴² “Highest and best use” is defined as, “[t]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.”

⁴³ See Neb. Rev. Stat. §77-1359 (3) (Reissue 2009). Neb. Rev. Stat. §77-1359 (4) (Reissue 2009).

persuasive evidence that the values as determined by the County Board of the “farm site” and “farm home site” were arbitrary or unreasonable.

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.”⁴⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴⁵ 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.⁴⁶ Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the Subject Property and comparable property.⁴⁷ 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.⁴⁸ 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.⁴⁹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁵⁰ 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. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁵¹

⁴⁴ *Neb. Const.*, Art. VIII, §1.

⁴⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁴⁶ *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).

⁴⁷ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁹ *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).

⁵⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁵¹ *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

B. Summary of the Evidence

The Taxpayer alleged that the “farm site” and “farm home site” acres were not assessed uniformly with comparable property in Sarpy County. Jarel Vinduska testified, in particular, that another parcel consisting of 1.79 acres should not have been used in comparison to the Subject Property. As noted above, Tim Ederer testified that sales receiving a market adjustment were not used to determine the base Rural Land Model value. Ederer testified that the parcel consisting of 1.79 acres received a positive 30% adjustment due to its premium location. Therefore, the evidence is that the 1.79 acre parcel was not used to value the Subject Property. This argument by the Taxpayer has no merit.

After reviewing all of the exhibits that were received in evidence, the Commission finds that there is no persuasive evidence that the County Board’s determination violated the Uniformity Clause of the Nebraska Constitution.⁵²

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 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.

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 2011 is affirmed.

⁵² *Neb. Const.*, Art. VIII, §1.

2. The taxable value of the Subject Property for tax year 2011 is:

2 Houses	\$ 120,202
Outbuildings	\$ 4,464
Agricultural Land	\$ 120,916
Farm Site	\$ 19,170
Farm Home Site	<u>\$ 55,800</u>
Total:	\$ 320,552

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 2011.
7. This Decision and Order is effective for purposes of appeal on February 14, 2014

Signed and Sealed: February 14, 2014

SEAL

Robert W. Hotz, Commissioner

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.