

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Sanford Family Farms, James E. Sanford,
Trustee
Appellant,

v.

Washington County Board of Equalization,
Appellee

Case Nos: 12R 007 & 13R 001

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

For the Appellant:

Sanford Family Farms,
James E. Sanford, Trustee,
Pro Se

For the Appellee:

Scott Vander Schaaf,
Washington County Attorney

Heard before Commissioners Keetle and Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Washington County. The parcel is 10.01 acres improved with a 2,668 square foot home. The legal description of the parcel is found at Exhibit 1. The property record card for the subject property is found at Exhibit 3 page 25 for tax year 2012 and Exhibit 4 page 33 for tax year 2013.

II. PROCEDURAL HISTORY

The Washington County Assessor determined that the assessed value of the subject property was \$271,030 for tax year 2012. Sanford Family Farms (the Taxpayer) protested this assessment to the Washington County Board of Equalization (the County Board) and requested an assessed valuation of \$219,995. The Washington County Board determined that the assessed value for tax year 2012 was \$268,620.¹ The Washington County Assessor determined that the assessed value of the subject property was \$272,130 for tax year 2013. The Taxpayer protested this assessment

¹ Exhibit 1

to the County Board and requested an assessed valuation of \$125,000. The Washington County Board determined that the assessed value for tax year 2012 was \$272,130.²

The Taxpayer appealed the decisions 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 June 11, 2011. At this hearing the Commission received Exhibits 1-7 and heard evidence and argument.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

² Exhibit 2

³ See, Neb. Rev. Stat. §77-5016(8) (2014 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷ *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.⁸ 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.⁹

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.”¹⁰ 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.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

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.¹³

"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."¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ Taxable value is the percentage of actual value

⁸ 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).

⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

The Taxpayer's pleadings and exhibits indicate that the Taxpayer alleged that the characteristics of the improvements on the subject property are incorrect in terms of bedrooms, bathrooms, and depreciation. The Taxpayer offered no evidence regarding the characteristics of the improvements on the subject property regarding number of bedrooms or bathrooms, and depreciation for the Commission to analyze regarding the Taxpayer's allegations.

At the hearing the Taxpayer only offered argument regarding the determination of the amount of the Subject Property classified as Roads and Ditches. The Taxpayer alleges that utilizing the soil types of a property when determining the amount of value changed to zero when classifying land as roads and ditches is not allowed by the Rules and Regulations of the Department of revenue. The Taxpayer's argument centers on the following language from the Nebraska Administrative Code concerning the assessment of agricultural and horticultural land: "Roads and ditches are to be counted and inventoried when the county is maintaining a public road on privately owned land. The public road and adjoining ditch acres will carry no taxable value to the land owner. Generally public roads and ditches will not exceed 4 acres per mile or 16 acres per section." The Taxpayer alleges that this language means that the only way that the value of roads can be calculated is by determining the total assessed value of a subject property as if it did not have any roads or ditches and then removing a proportion of that value based on the proportion of road to total acres.¹⁹

The Assessor testified that when determining the assessed value of an agricultural and horticultural parcel of real property one of the factors he based his determination of value on was

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ The Taxpayer offered as an example the 10.01 acre parcel that contains .85 acres of roads and ditches the 8.5% of the total assessed land value should be removed. (.85 Acres road/10.01 total acres=.085 or 8.5% of total assessed value) See Ex. 7.

the land capability groups (LCG) as determined by the Property Tax Administrator.²⁰ When inventorying and assigning acres to roads and ditches the Assessor determines the location of the road on the property, then determines the amount of each of the LCG's under the road and removes this amount of each LCG from the soil survey for that property.

Both the Taxpayer's and the Assessor's methods of determining the amount of value of a property to be allocated roads and ditches utilize the soil classifications of a property. The Assessor's methodology inventories the actual amount of each LCG actually used for roads and ditches on a subject property. The Assessor's methodology for calculating the land designated as roads and ditches complies with the requirement of Title 350, ch 14 §005.01C (03/09). The Taxpayer's methodology for roads and ditches simply removes a proportion of value from the total value of the property, ignoring the actual LCG's of the land utilized as roads and ditches.

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.”²¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² 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.²³ 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.²⁴ 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.²⁵ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result

²⁰ See, Neb. Rev. Stat. 77-1363(2014 Cum. Supp.)

²¹ *Neb. Const.*, Art. VIII, §1.

²² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²³ *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).

²⁴ 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

may be that it is assessed at less than the actual value.²⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁷ 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.²⁸

B. Summary of the Evidence

The Taxpayer's pleadings and exhibits indicate that the Taxpayer alleges that the assessed value of the residential improvements on the Subject Property is above the average assessed value of improvements in the county. The Taxpayer offered no evidence regarding the assessed value of any other property in Washington County for the Commission to analyze regarding the Taxpayer's allegations.

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 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 appeal of the Taxpayer is denied.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Washington County Board of Equalization determining the value of the subject property for tax year 2012 and 2013 are affirmed.²⁹

²⁶ *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).

²⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁸ *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

²⁹ 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.

2. The assessed value of the subject property for tax years 2012 and 2013 are:

Case No 12R-007

Land:	\$ 64,500
<u>Improvements:</u>	<u>\$204,120</u>
Total:	\$268,620

Case No. 13R-001

Land:	\$ 68,010
<u>Improvements:</u>	<u>\$204,120</u>
Total:	\$272,130

3. This decision and order, if no appeal is timely filed, shall be certified to the Washington County Treasurer and the Washington County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 years 2012 and 2013.
7. This order is effective for purposes of appeal on August 5, 2016.

Signed and Sealed: August 5, 2016.

Steven A. Keetle, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.