

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Don L. Clarke,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case Nos: 14A 081, 14A 082, 14A 083,
14A 084, 14A 085, 15A 030, 15A 031,
15A 032, 15A 033, 15A 034

Decision and Order
Affirming the Determinations of the Dodge
County Board of Equalization

For the Appellant:
Don L. Clarke,
Pro Se

For the Appellee:
Linsey Moran Bryant,
Deputy Dodge County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property in appeals 14A 081 and 15A 034 is a 60 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 11 and 12 respectively.

The Subject Property in appeals 14A 082 and 15A 033 is a 69.05 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 13 and 14 respectively.

The Subject Property in appeals 14A 083 and 15A 032 is a 24.45 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 15 and 16 respectively.

The Subject Property in appeals 14A 084 and 15A 031 is a 9.32 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 17 and 18 respectively.

The Subject Property in appeals 14A 085 and 15A 030 is a 9.59 acre parcel located in Dodge County, Nebraska. The property record card and the legal description of the Subject Property are found at Exhibits 19 and 20 respectively.

II. PROCEDURAL HISTORY

The Dodge County Assessor (the County Assessor) determined that the assessed value of the Subject Property in appeals 14A 081 and 15A 034 was \$73,350 for tax years 2014,¹ and 2015.² Don L. Clarke (the Taxpayer) protested these assessments to the Dodge County Board of Equalization (the County Board) and requested a decreased assessed valuation for each tax year. The County Board determined that the taxable value was \$73,350 for both tax years 2014,³ and 2015.⁴

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 082 and 15A 033 was \$90,675 for tax years 2014,⁵ and 2015.⁶ Don L. Clarke protested these assessments to the County Board and requested a decreased assessed valuation for each tax year. The County Board determined that the taxable value was \$90,675 for both tax years 2014,⁷ and 2015.⁸

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 083 and 15A 032 was \$28,575 for tax years 2014,⁹ and 2015.¹⁰ Don L. Clarke protested these assessments to the County Board and requested a decreased assessed valuation for each tax year. The County Board determined that the taxable value was \$28,575 for both tax years 2014,¹¹ and 2015.¹²

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 3.

⁸ Exhibit 4.

⁹ Exhibit 5.

¹⁰ Exhibit 6.

¹¹ Exhibit 5.

¹² Exhibit 6.

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 084 and 15A 031 was \$13,980 for tax years 2014,¹³ and 2015.¹⁴ Don L. Clarke protested these assessments to the County Board and requested a decreased assessed valuation for each tax year. The County Board determined that the taxable value was \$13,980 for both tax years 2014,¹⁵ and 2015.¹⁶

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 085 and 15A 030 was \$7,635 for tax years 2014,¹⁷ and 2015.¹⁸ Don L. Clarke protested these assessments to the County Board and requested a decreased assessed valuation for each tax year. The County Board determined that the taxable value was \$7,635 for both tax years 2014,¹⁹ and 2015.²⁰

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits. The Commission also issued several orders in response to pre-hearing motions filed by the Taxpayer. The Commission held a consolidated hearing on August 18, 2013.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.²¹ 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."²²

¹³ Exhibit 7.

¹⁴ Exhibit 8.

¹⁵ Exhibit 7.

¹⁶ Exhibit 8.

¹⁷ Exhibit 9.

¹⁸ Exhibit 10.

¹⁹ Exhibit 9.

²⁰ Exhibit 10.

²¹ 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).

²² *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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.²³

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.²⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²⁵

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.²⁶ 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.²⁷

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.”²⁸ 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.”²⁹

IV. VALUATION 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

²³ *Id.*

²⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁶ 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).

²⁷ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

²⁸ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁹ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

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.³⁰

“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.”³¹ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”³² 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.³³ All real property in Nebraska subject to taxation shall be assessed as of January 1.³⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁵

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.³⁶

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³⁷

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

³⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

³¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

³² *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³³ Neb. Rev. Stat. §77-131 (Reissue 2009).

³⁴ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

³⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³⁶ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

³⁷ Neb. Rev. Stat. §77-132 (Reissue 2009).

(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.³⁸

V. EQUALIZATION 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.”³⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴⁵ 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].”⁴⁶ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁷

³⁸ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

³⁹ *Neb. Const.*, Art. VIII, §1.

⁴⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁴¹ *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).

⁴² See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁴ *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).

⁴⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁷ *Id.* at 673, 94 N.W.2d at 50.

VI. Summary of the Evidence

According to the property record files, each of the Subject Properties was assessed as recreational land, with three of the parcels also including some acres of waste land.⁴⁸ For each parcel, the County Assessor valued the recreational land at \$1,500 per acre, and the waste land at \$0.

Don L. Clarke testified that the Subject Properties should not have been classified as recreational land since they were subject to a Conservation Program Contract (the Contract) with the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS).⁴⁹ The Contract was executed sometime during 2012 and its terms extended through December 31, 2016.⁵⁰

The Taxpayer testified that under the Contract he was paid \$650 per year and was obligated to eradicate Eastern Red Cedar trees and promote the growth of hardwood trees.⁵¹ He testified that he had worked on such eradication approximately four times per year since the commencement of the Contract. He asserted that the Subject Properties should be assessed as agricultural land and horticultural land under Neb. Rev. Stat. §77-1359(2)(b) since they were enrolled in a federal program “in which payments are received for removing such land from agricultural or horticultural production.”⁵²

However, in his testimony the Taxpayer admitted that he had made no agricultural use of the land other than enrolling the land in the NRCS program. He further testified that he and his extended family used the property approximately every third weekend, when the properties were not flooded, for driving three-wheeled and four-wheeled vehicles around trails on the properties for the purpose of enjoyment.

Under Rules and Regulations promulgated by the Nebraska Department of Revenue, recreational land includes “all parcels predominantly used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of these uses are fishing, hunting,

⁴⁸ Exhibits 11-20.

⁴⁹ Exhibit 23.

⁵⁰ Exhibit 23:3-4.

⁵¹ Exhibit 23:3-4.

⁵² Neb. Rev. Stat. §77-1359(2)(b).

camping, boating, hiking, picnicking, or having an access or view that simply allows diversion, entertainment, and relaxation.⁵³ Based upon the evidence in the record, the Commission finds that the predominant use of the Subject Properties for tax years 2014 and 2015 was for recreational purposes.

Clark asserted two parcels should be considered by the Commission for equalization purposes.⁵⁴ However, the Commission finds that the parcels are not comparable to the Subject Properties because they are agricultural and horticultural parcels, not recreational parcels. Additionally, the County Board provided numerous property record cards for parcels that were assessed as recreational land.⁵⁵ In every case, the recreational land was valued at \$1,500 per acre; the same as the Subject Property. Clarke provided no persuasive evidence to prove that the taxable value of the Subject Properties was an amount other than \$1,500 per acre.

VII. 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 decisions of the County Board should be affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dodge County Board of Equalization determining the taxable value of the Subject Properties for tax years 2014 and 2015 are affirmed.
2. The taxable value of the Subject Property in appeals 14A 081 and 15A 034 for tax years 2014 and 2015 is \$73,350.
3. The taxable value of the Subject Property in appeals 14A 082 and 15A 033 for tax years 2014 and 2015 is \$90,675.

⁵³ NAC Title 350, Chapter 10, §002.15J.

⁵⁴ See, Exhibit 24.

⁵⁵ Exhibits 11-20.

4. The taxable value of the Subject Property in appeals 14A 083 and 15A 032 for tax years 2014 and 2015 is \$28,575.
5. The taxable value of the Subject Property in appeals 14A 084 and 15A 031 for tax years 2014 and 2015 is \$13,980.
6. The taxable value of the Subject Property in appeals 14A 085 and 15A 030 for tax years 2014 and 2015 is \$7,635.
7. This Decision and Order, if no appeal is timely filed, shall be certified to the Dodge County Treasurer and the Dodge County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
8. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
9. Each party is to bear its own costs in this proceeding.
10. This Decision and Order shall only be applicable to tax years 2014 and 2015.
11. This Decision and Order is effective for purposes of appeal on August 19, 2016.

Signed and Sealed: August 19, 2016

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 (2010 Cum. Supp.), and other provisions of Nebraska Statutes and Court Rules.