

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

William Burdess,
Appellant,

v.

Washington County Board of Equalization,
Appellee.

Case Nos: 13A 039, 14A 091, 15A 0161 &
16A 0008

Decision and Order

Reversing the Decisions of the Washington
County Board of Equalization
in Case Nos 13A 039 & 14A 091
and

Affirming the Decisions of the Washington
County Board of Equalization
in Case Nos 15A 161 & 16A 008

For the Appellant:

Shaun James,
Smith Gardner & Slusky

For the Appellee:

Emily A. Beamis
Deputy Washington County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 60 acre parcel located in Washington County, Nebraska. The legal description of the Subject Property is found at Exhibits 5-8. The property record cards for the Subject Property are found at Exhibits 10, 14, 15, and 16.

II. PROCEDURAL HISTORY

For tax year 2013, the Washington County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$298,550.¹ William Burdess (the Taxpayer) protested this assessment to the Washington County Board of Equalization (the County Board) and requested an assessed valuation of \$219,105.² The County Board determined that the taxable value for tax year 2013 was \$298,550.³

¹ Exhibit 5.

² Exhibit 5.

³ Exhibit 5.

For tax year 2014, the County Assessor determined that the assessed value of the Subject Property was \$319,445.⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$240,090.⁵ The County Board determined that the taxable value for tax year 2014 was \$319,445.⁶

For tax year 2015, the County Assessor determined that the assessed value of the Subject Property was \$322,420.⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$256,320.⁸ The County Board determined that the taxable value for tax year 2014 was \$300,055.⁹

For tax year 2016, the County Assessor determined that the assessed value of the Subject Property was \$336,545.¹⁰ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$250,830.¹¹ The County Board determined that the taxable value for tax year 2016 was \$336,545.¹²

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 and submitted Pre-Hearing Conference Reports, as ordered by the Commission. The Commission held a consolidated hearing on November 29, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.¹³ 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

⁴ Exhibit 6.

⁵ Exhibit 6.

⁶ Exhibit 6.

⁷ Exhibit 7.

⁸ Exhibit 7.

⁹ Exhibit 7.

¹⁰ Exhibit 8.

¹¹ Exhibit 8.

¹² Exhibit 8.

¹³ 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).

official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”¹⁴

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.¹⁵

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.¹⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁷

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁸ 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.¹⁹

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.”²⁰ 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.”²¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²²

¹⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁵ *Id.*

¹⁶ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

¹⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁸ 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).

¹⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

²⁰ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

²¹ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

²² Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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 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.²³

“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.”²⁴ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”²⁵ 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.²⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁸

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.²⁹

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³⁰

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.³¹

²³ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

³⁰ Neb. Rev. Stat. §77-132 (Reissue 2009).

³¹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

Wasteland includes land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes.³²

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.”³³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁴ 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.³⁵ 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.³⁶ 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.³⁷ 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.³⁸ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁹ 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].”⁴⁰ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴¹

³² Title 350 NAC, Ch. 14, §002.54 (Rev. 3/15/09).

³³ *Neb. Const.*, Art. VIII, §1.

³⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁵ *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).

³⁶ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³⁷ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁸ *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).

³⁹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴¹ *Id.* at 673, 94 N.W.2d at 50.

VI. SUMMARY OF THE EVIDENCE

The Taxpayer asserted that the taxable value of the parcel should be reduced for two reasons: 1) That 29.12 acres of the property should be assessed as waste land with no value, and 2) that the home site should be equalized with another home site approximately one-half mile from the Subject Property.

Of the 29.12 acres in question, 25.12 acres were assessed as Land Use GRT1 with an assessed value of \$40,785 for tax year 2013⁴² and \$46,865 for tax year 2014.⁴³ In tax years 2015 and 2016, the 29.12 acres in question were assessed as waste land.⁴⁴ All waste land in Washington County was assessed at \$290 per acre for tax year 2013⁴⁵ and at \$335 per acre for tax year 2014.⁴⁶ Waste land was assessed at \$450 per acre in tax years 2015 and 2016.⁴⁷

At the hearing, the parties stipulated that the 29.12 acres of the Subject Property should have been categorized and assessed as waste land rather than as acres with a land use designated as GRT1. However, the Taxpayer argued that the waste land should be valued at \$0 for tax years 2013, 2014, 2015, and 2016 because it added no agricultural or recreational value to the parcel.

The Taxpayer offered evidence that the waste acres were not cultivatable or profitable, but were used instead for limited hunting, mushroom gathering, and walnut tree harvesting. William Burdess testified that he had permitted others to gather mushrooms for personal use over a period of many years and that he did not allow any commercial hunting on the property, but rather only family members and friends hunted the land. Burdess also testified that he had harvested a few walnut trees for several thousand dollars prior to the tax years at issue. He further testified that he had first applied for a special valuation designation for the parcel in 1997.

The Taxpayer also argued that the home site associated with the parcel should be assessed at a value no higher than an alleged comparable home site one-half mile away. The Subject

⁴² See, Exhibit 10:49.

⁴³ See, Exhibit 14:42.

⁴⁴ See, Exhibit 15:49, and Exhibit 16:36.

⁴⁵ See, Exhibit 10:49.

⁴⁶ See, Exhibit 14:42.

⁴⁷ See, Exhibit 15:49, and Exhibit 16:36.

Property home site was assessed at \$41,000 for each of the four tax years.⁴⁸ The alleged comparable home site was assessed at \$27,000 for tax year 2014.⁴⁹

The County Board argued the waste land acres of the Subject Property had some market value, including the potential for tree harvesting, mushroom gathering, hunting, and the fact that they were adjacent to profitable commercial agricultural and horticultural land. The County Board also argued that the home site of the Subject Property was appropriately assessed in that the comparable property was in a different market area and had significantly different physical characteristics.

Steven E. Mencke, the Washington County Assessor, testified on behalf of the County Board. Mencke testified that all agricultural properties in Washington County were eligible to be treated as special valuation land because of non-agricultural influences. He testified that he assessed waste land acres based upon the sales of parcels containing waste land in other counties, and that he increased the per acre value for waste land acres in relation to the increases in the assessment of the other agricultural acres of the property.

Regarding the home site value of the Subject Property, Mencke testified all home sites in the county were assessed as rural residential land at 100% of market value. He explained that the Subject Property was in Market Area 6 and the alleged comparable parcel was in Market Area 7. Mencke testified that each market area was created based upon proximity to greater Omaha and related effects on the values of Washington County parcels. He also explained that Market Area 7 is river bottom land, which is more prone to flooding and commands lower residential prices when sold. Mencke emphasized that the Subject Property home site was located on a bluff above the nearby river bottom land in a market area that commanded higher residential prices for home sites in comparison.

Ronald Hine, a member of the Washington County Board of Equalization for each of the four tax years, testified that he had walked all of the waste land of the Subject Property while gathering mushrooms for personal use. Hine testified to his belief that the waste land acres had no agricultural or recreational value and that the County Board had not understood the issues

⁴⁸ See, Exhibit 10:49, Exhibit 14:42, Exhibit 15:49, and Exhibit 16:36.

⁴⁹ Exhibit 17:148.

in the Protest hearings for the Subject Property. He also asserted his opinion that the assessment of the waste acres and site values of the Subject Property were not fair.

The Commission finds that the stipulated agreement regarding the number of waste land acres on the Subject Property for tax years 2013 and 2014 is supported by the evidence. However, there is not clear and convincing evidence to support the Taxpayer's assertion that the waste land acres should have an assessed value of \$0 per acre.

Regarding the home site value, the Commission finds that the Subject Property and the alleged comparable parcel are in different market areas and have significantly different physical characteristics. Therefore, the fact that the home site of the alleged comparable property is assessed at an amount less than the home site of the Subject Property does not warrant an equalized value for the home site of the Subject Property.

VII. 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 determinations for tax years 2013 and 2014, but 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 for tax years 2015 and 2016.

The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable for tax years 2013 and 2014, but there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable for tax years 2015 and 2016.

Therefore, the Decisions of the County Board for tax years 2013 and 2014 should be vacated and reversed, and the Decisions of the County Board for tax years 2015 and 2016 should be affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The Decisions of the Washington County Board of Equalization determining the taxable value of the Subject Property for tax years 2013 and 2014 are vacated and reversed.⁵⁰
2. The Decisions of the Washington County Board of Equalization determining the taxable value of the Subject Property for tax years 2015 and 2016 are affirmed.
3. The taxable value of the Subject Property is as follows:

13A 039

Land	\$153,310
Buildings	<u>\$111,740</u>
Total	\$265,050

14A 091

Land	\$169,255
Buildings	<u>\$111,740</u>
Total	\$280,995

15A 161

Land	\$193,470
Buildings	<u>\$106,585</u>
Total	\$300,055

16A 008

Land	\$210,545
Buildings	<u>\$126,000</u>
Total	\$336,545

4. 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.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

⁵⁰ Taxable 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.

6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2013, 2014, 2015, and 2016.
8. This Decision and Order is effective for purposes of appeal on December 9, 2016.⁵¹

Signed and Sealed: December 9, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁵¹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.