

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jerome S. Tomasziewicz
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13A 029

Decision and Order

For the Appellant:

Jerome S. Tomasziewicz,
Pro Se

For the Appellee:

Shakil A. Malik,
Douglas County Attorney

The appeal was heard before Commissioners Steven A. Keetle and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 36.52 acre parcel located in Douglas County, Nebraska. The legal description of the Subject Property is found at Exhibit 2 page 3.. The property record card for the Subject Property is found at Exhibit 2 page 3.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$131,500 for tax year 2013. Jerome S. Tomasziewicz (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$29,000. The Douglas County Board determined that the assessed value for tax year 2013 was \$131,500.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on August 12, 2016.

¹ Exhibit 1.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.² 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."³

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.⁴

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

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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

² 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).

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

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

⁷ 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).

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

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁹ 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.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

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.¹²

“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.”¹³ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

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, including

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

¹⁰ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

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

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

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

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

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁸

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”¹⁹

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

(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.²⁰

V. EQUALIZATION

“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

¹⁸ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

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 See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 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 [sic].”²⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁹

A. Summary of the Evidence

The Taxpayer testified that he purchased the Subject Property in 1981 and he has not really touched the property since then. He stated he visited the property about once a year. The Taxpayer further testified that the property was wilderness that was not used as farm ground. He stated it was used for pleasure and that his relatives had hunted on the property. Because the Subject Property is not used primarily for agricultural and horticultural purposes it cannot be classified as agricultural or horticultural land.

Stan Mlotek (the Appraiser), real estate specialist for the Douglas County Assessor/Register of Deeds office testified that he is primarily responsible for determining assessed values for agricultural and horticultural property as well as other large vacant parcels of land in Douglas County. The Appraiser testified that the assessed value of the Subject Property was determined using three vacant land sales located in the same area as the Subject Property.³⁰ Two of these sales had non-agricultural use and the same type of access as the Subject Property and sold for \$3,662 per acre and \$4,800 per acre. The third sale was used for agricultural and horticultural purposes and sold for \$5,289 per acre. The Taxpayer offered no other evidence of value for the Subject Property.

The Appraiser testified that the third sale, while used to determine the assessed values for non-agricultural and horticultural vacant land, received Special Valuation because it was used for agricultural and horticultural purposes and had applied for and received special valuation status.

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, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁹ *Id.* at 673, 94 N.W.2d at 50.

³⁰ See E2:6

Properties which qualify for Special Valuation constitute a separate and distinct class of property and shall be assessed based on their value without regard for the value the land would have for non-agricultural or horticultural uses.³¹

The Taxpayer also alleged that the assessed value of the Subject Property is not valued uniformly and proportionally with the assessed value of the property in the third sale. The Nebraska Constitution allows the legislature to separately classify agricultural and horticultural land so that it is not required to be valued uniformly and proportionally with other classes of real property.³² The property in the third sale is agricultural and horticultural and the Subject Property is not. Therefore the Taxpayer's allegation has no merit.

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 Douglas County Board of Equalization determining the value of the Subject Property for tax year 2013 is affirmed.³³
2. The assessed value of the Subject Property for tax year 2013 is:

<u>Land:</u>	<u>\$131,500</u>
Total:	\$131,500

³¹ See, Neb. Rev. Stat. §§77-201, 77-1343 et. Seq. (Reissue 2009)

³² See, Neb. Const. Art VIII §1, Neb. Rev. Stat. 77-201, *Krings v. Garfield Cty. Bd. Of Equal.* 286 Neb. 352, 835 N.W.2d 750 (2013)

³³ 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.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas 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 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 2013.
7. This Decision and Order is effective for purposes of appeal on October 28, 2016.³⁴

Signed and Sealed: October 28, 2016

Steven A. Keetle, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁴ 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.