

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

The Central Nebraska Public Power & Irrigation District, Holdrege, NE,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee,

Case Nos: 11R-085, 11R-086, 11R-087,  
11R-088, 11R-089, 11R-090, 11R-091

Order Reversing the Determination of the  
County Board of Equalization  
(Confession of Judgment)

**For the Appellant:**

Charles D. Brewster,  
Anderson, Klein, Swan & Brewster

**For the Appellee:**

Randy Fair  
Keith County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Properties are seven different improvements on leased public lands in Keith County, Nebraska. Each parcel is improved with a residence which is privately owned and occupied. The legal descriptions of the parcels are found in the respective case files.<sup>1</sup>

**II. PROCEDURAL HISTORY**

For each of the subject properties, the Keith County Assessor assessed the value of the subject property to the owner, The Central Nebraska Public Power & Irrigation District, Holdrege, NE (Taxpayer). The Taxpayer protested these assessments to the Keith County Board of Equalization (County Board) and requested that the Taxpayer not be assessed property tax in relation to the subject properties. The County Board determined that the assessments were to be made against the Taxpayer for each of the subject properties for tax year 2011.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties reached a stipulated agreement by Confession of Judgment. The Commission held a hearing on June 28, 2012. The parties entered into a stipulated agreement on the record, and the Commission took the matter under advisement.

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<sup>1</sup> The legal description for each improvement on leased public land is contained on the Appeal form.

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup> 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.”<sup>3</sup>

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.<sup>4</sup>

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

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup> 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.<sup>8</sup>

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.”<sup>9</sup> The commission may also “take notice of judicially cognizable facts and in

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<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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

<sup>7</sup> 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).

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

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

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.”<sup>10</sup>

#### 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.<sup>11</sup>

"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."<sup>12</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>13</sup> 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.<sup>14</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>15</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>16</sup>

“Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property.”<sup>17</sup> “Leased public property, other than property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201.”<sup>18</sup>

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<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>14</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>15</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>16</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-1374 (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-202.11(1) (Reissue 2009).

## **B. Summary of the Evidence**

The Parties stipulated at the hearing that pursuant to Neb. Rev. Stat. §77-1374, Central Nebraska Public Power & Irrigation District, Holdrege, NE was not to be assessed property tax for any of the subject properties. The assessment for the subject properties for tax year 2011 should be made pursuant to Neb. Rev. Stat. §77-1374 (Reissue 2009).

## **V. CONCLUSION**

The Commission finds that the stipulation of the parties is 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 the stipulation of the parties is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The Decisions of the Keith County Board of Equalization determining that the subject properties, improvements on leased public lands, are to be assessed against the Central Nebraska Public Power & Irrigation District, Holdrege, NE for tax year 2011 is vacated and reversed.
2. This decision and order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each Party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2011.

6. This order is effective for purposes of appeal on July 26, 2012.

Signed and Sealed: July 26, 2012

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.