

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

Acker Family, LLC,  
Appellant,

v.

Banner County Board of Equalization,  
Appellee.

Case No: 10A-380 & 10A-381

Decision Affirming the Determination  
of the Banner County  
Board of Equalization

**For the Appellant:**  
Dyle Acker, Member  
Acker Family, LLC

**For the Appellee:**  
James L. Zimmerman,  
Banner County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property consists of a 216.8 acre parcel of agricultural land (Case No. 10A-380) and a 160.21 acre parcel of agricultural land (Case No. 381), both located in Banner County, Nebraska. The legal description of the subject properties are found in the Property Record Files at Exhibits 3 & 4.

**II. PROCEDURAL HISTORY**

The Banner County Assessor determined that the assessed value of the subject properties was \$51,616 (Case No. 10A-380) and \$33,679 (Case No. 10A-381) for tax year 2010. Acker Family, LLC (the Taxpayer) protested this assessment to the Banner County Board of Equalization (the County Board) and requested an assessed valuation of \$44,020 (Case No. 10A-380) and \$24,500 (Case No. 10A-381). The County Board determined that the assessed value for tax year 2010 was \$51,616 (Case No. 10A-380) and \$33,679 (Case No. 10A-381). (E1 and E2)

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of 35 exchanged exhibits. The Commission held a hearing on July 17, 2011.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo. 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>1</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." *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.

Id. 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *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. 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) . The County Board need not put on any evidence to support its valuation of the property at issue

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<sup>1</sup> "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).

unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

#### 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.

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

Neb. Rev. Stat. §77-112 (Reissue 2009). The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

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. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in Nebraska subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009) All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.

Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.” Neb. Rev. Stat. §77-132 (Reissue 2009).

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.

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

“Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under the compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.” *Dowd v. Board of Equalization*, 240 Neb. 437, 447, 482 N.W.2d 583, 589 (1992) (quoting *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982)). “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.” *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

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

Colleen J. Acker, a Member of the Acker Family, LLC, purchased the Subject Property in Case No. 10A-380 in August of 2009, and the Subject Property in Case No. 10A-381 in March of 2010. (E7, E8). The Taxpayer alleges that the assessed valuation for tax year 2010 should be the same as the purchase prices of the subject properties in 2009 and 2010. The Taxpayer further alleged that the sales of the subject properties were disqualified from the Sales File used by the County Assessor to determine agricultural land and horticultural land assessed values for tax year 2010, but that they should not have been disqualified.

The Real Estate Transfer statements show that Subject Properties were purchased by Colleen J. Acker, from Janet Laws, and that these transfers were between relatives. (E7 & E8). Prior to the sales of the Subject Properties they were transferred to Janet Laws as an heir to the estate of Wayne E. Cashler. (E26). Dyle Acker testified that those properties were then transferred to the Acker Family, LLC, but purchased by Colleen J. Acker due to the language of an agreement between family members regarding the sale of the Subject Properties. Mr. Acker testified that, as relates to the subject property, Colleen J. Acker and three other relatives had a right of first refusal to purchase the property if an offer to purchase was received by Janet Laws, which was set forth in an “Agreement on distribution of Estate Assets.” (see, E31, which contains an excerpt from that agreement). Mr. Acker further testified that Janet Laws listed the subject properties for sale with real estate brokers as soon as she was able to, that the real estate brokers received offers to purchase the subject properties, and that Colleen J. Acker exercised her right of first refusal and purchased the subject properties. To support this testimony, the Taxpayer offered the purchase agreements for the Subject Properties (E32), a purchase offer with the names of the potential buyer(s) removed for the property that is the subject of Case No. 10A-381 (E30), a letter from a real estate broker (E29), and a printout of an internet listing of the Subject Properties for sale (E28).

The Courts in Nebraska have held that, “[i]t is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.” *Forney v. Box*

*Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). In the current cases the Taxpayer did not offer any other evidence to support his contention that the selling price of the subject property reflected actual value. The County offered Real Estate Transfer statements for several different properties in the area of the subject properties to support the agricultural land and horticultural land values determined by the Banner County Assessor that were applied to the subject property but the Property Record Files for these properties were not offered into the record before the Commission. (E9 to E18).

The Taxpayer testified that he believed the sales of the subject properties were disqualified and not included in the Sales File used by the County Assessor to determine agricultural land and horticultural land assessed values for tax year 2010. The record before the Commission does not contain information to demonstrate if the sales of the Subject Properties were or were not determined to be disqualified sales and, as a result, were or were not included in the Sales Roster for Banner County. Additionally, the sales of the subject properties occurred after the three year study period used for the 2010 Sales File and would not have been included in any event. See, Title 350, ch 12, §003.07A(3) (3/09).

## 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.” *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *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). 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. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *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). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). 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. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959)

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

The Taxpayer alleges that the Price Related Differential for the assessment to sales Ratio for Banner County for tax year 2010 indicates that the subject properties are over assessed in relation to other similar properties. The Price Related Differential, a statistical measure of the quality of assessments of agricultural land and horticultural land in Banner County for tax year 2010 was determined to be 108.88. (E20). A price related differential of greater than 103 can indicate that higher valued properties are being under appraised in relation to lower valued properties. *Mass Appraisal of Real Property*, International Association of Assessing Officers, (1999) p. 240. However, the evidence in the record before the Commission is insufficient to evaluate the assertion of the Taxpayer as it relates to the Subject Properties. The only Property Record Files offered for properties that recently sold are those for the Subject Properties offered by the County Board, and as noted earlier these sales occurred outside the study period used to determine the PRD for agricultural land and horticultural land in Banner County for tax year 2010.

**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 decisions of the Banner County Board of Equalization determining the value of the subject properties for tax year 2010 are affirmed.
2. The assessed value of the subject property for tax year 2010 are:

Case No 10A-380

Land: \$51,616

Total: \$51,606

Case No. 10A-381

Land: \$33,679

Total: \$33,679

3. This decision and order, if no appeal is timely filed, shall be certified to the Banner County Treasurer and the Banner County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 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 year 2010.

7. This order is effective for purposes of appeal on May 21, 2012

Signed and Sealed: May 21,2012

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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.