

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

Irene Baltz Testimonial Trust,  
Appellant,

v.

Saunders County Board of Equalization,  
Appellee.

Case No: 11A 029

Order Affirming  
the Determination of the  
Saunders County Board of Equalization

**For the Appellant:**

Marvin D. Brainard, Trustee,  
Pro Se

**For the Appellee:**

Scott Tingelhoff,  
Saunders County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property is a 79.93 acre agricultural parcel with improvements, located in Saunders County, Nebraska. The legal description of the Subject Property is found at Exhibit 2, page 1. The property record card for the Subject Property is found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Saunders County Assessor determined that the assessed value of the Subject Property was \$213,060 for tax year 2011. Marvin Brainard, Trustee of the Irene Baltz Testimonial Trust (the Taxpayer), protested this assessment to the Saunders County Board of Equalization (the County Board). The County Board determined that the assessed value for tax year 2011 was \$213,060.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on November 28, 2012.

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<sup>1</sup> Exhibit 1:1. The County Board determined the taxable value of the land to be \$193,180, and the taxable value of the improvements to be \$19,880.

### 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

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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). “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).

<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).

cross appeal.”<sup>9</sup> 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.”<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> The Courts have held that “[a]ctual 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>

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.

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

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

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

<sup>12</sup> *Id.*

<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).

Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>17</sup>

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.<sup>18</sup> “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>19</sup>

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

Marvin Brainard, Trustee of the Irene Baltz Testimonial Trust, testified on behalf of the Taxpayer. Brainard asserted that the Subject Property was not equalized with other nearby agricultural parcels, as discussed below.

# **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.”<sup>20</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result

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<sup>17</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>20</sup> *Neb. Const.*, Art. VIII, §1.

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>22</sup> *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).

<sup>23</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>24</sup> *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.<sup>25</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>26</sup> 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].<sup>27</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>28</sup>

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

Marvin Brainard asserted that the assessed value of the land component of the Subject Property was not equalized with other nearby agricultural parcels to the North and West of the Subject Property. Brainard offered the property record cards for two parcels, Exhibit 5 and Exhibit 6, to support his assertion. Brainard did not dispute the assessed value of the improvements on the Subject Property.

Terry Kubik testified in support of the County Board’s determination. Kubik explained that the agricultural acres of the Subject Property, as well as other agricultural parcels in the same market area, market area 5, were valued consistently by soil types. He testified that sales were used to determine the per acre values of each soil type within each market area within the County.<sup>29</sup> Specifically, the Land Classification Groupings (LCG) of 2D1 and 4D1 for the Subject Property and the parcels in Exhibits 5 and 6 each were assessed at \$2,530 per acre and \$1,255 per acre respectively.<sup>30</sup> Since the per acre values are the same for the Subject Property as for the parcels at Exhibits 5 and 6, the Commission finds no grounds for an equalized value at an amount less than that determined by the County Board.

Kubik also testified that the parcel at Exhibit 4 was not in the same market area as the Subject Property, but was instead in market area 2.<sup>31</sup> As such, a different set of sales was used to

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<sup>25</sup> *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).

<sup>26</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>27</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>28</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>29</sup> See Exhibit 9.

<sup>30</sup> Compare Exhibit 2:3 to Exhibit 5:2 and Exhibit 6:2.

<sup>31</sup> Exhibit 4, page 1 indicates the parcel is located in market area 2.

determine the per acre values of each soil type for that parcel and for all agricultural parcels within that market area. As a result, Kubik testified, the per acre values for the LCG of 2D1 for the parcel in Exhibit 4 differed from the per acre values for all of the properties in market area 5, including the Subject Property.<sup>32</sup> Additionally the Subject Property was given a lower (not higher) per acre value for its 2D1 acres than the per acre value for 2D1 acres on the parcel in Exhibit 4. Based upon this comparison, there is again no basis for an equalized value at an amount less than that determined by the County Board.

## V. 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 determination of the County Board should be affirmed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Saunders County Board of Equalization determining the value of the subject property for tax year 2011 is affirmed.
2. The assessed value of the subject property for tax year 2011 is:

Land:	\$193,180
<u>Improvements:</u>	<u>\$ 19,880</u>
Total:	\$213,060.

3. This Order, if no appeal is timely filed, shall be certified to the Saunders County Treasurer and the Saunders 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.

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<sup>32</sup> Exhibit 9. The per acre value for 2D1 land in market area 2 was actually higher than the 2D1 land in market area 5.

5. Each party is to bear its own costs in this proceeding.
6. This Order shall only be applicable to tax year 2011.
7. This Order is effective for purposes of appeal on November 30, 2012.

Signed and Sealed: November 30, 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.) and other provisions of Nebraska Statutes and Court Rules.