

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John A. Knapp,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee

Case No: 10A-324 & 11A-128

Order Affirming the Decisions of the Sarpy
County Board of Equalization

For the Appellant:

John A. Knapp,
Taxpayer

For the Appellee:

Kerry Schmid,
Deputy Sarpy County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is an 81.88 acre parcel located in Sarpy County, Nebraska, improved with a residence and numerous other buildings. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 6.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$349,117 (10A-234) for tax year 2010 and \$401,171 (11A-128) for tax year 2011. John A. Knapp (the Taxpayer) protested these assessments to the Sarpy County Board of Equalization (the County Board) and requested lowered assessed values. The County Board determined that the taxable value was \$349,117 (10A-234) for tax year 2010¹ and \$401,171 (11A-128) for tax year 2011².

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on March 21, 2012.

¹ Exhibit 1.

² Exhibit 2.

On appeal, only the taxable value of the farm home site and farm site were put at issue by the Taxpayer, and were assessed at 100% of actual value. The Taxpayer did not contest the taxable value of any of the improvements, including the residence. The Taxpayer also did not contest the taxable value of the unimproved portion of the parcel that was designated as agricultural or horticultural land and which qualified for special valuation.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ 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."⁴

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.⁵

In an appeal "the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment."⁶ 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.⁷ Proof that the order, decision,

³ 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).

⁴ *Brenner*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ *Id.* at 284, 276 N.W.2d at 812 (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

⁷ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ 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.¹⁰

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.”¹¹ 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.”¹²

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.¹³

"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."¹⁴ The Courts have held that “[a]ctual

⁸ Omaha Country Club v. Douglas Cty. Bd. of Equal., 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ Bottorf v. Clay County Bd. of Equalization, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

value, market value, and fair market value mean exactly the same thing.”¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸ Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.¹⁹ Under Nebraska Statutes §77-1359:

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of this section and section 77-1363:

(1) Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, 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;...

(3) Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to public road; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.²⁰

(emphasis added.) “Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²¹

B. Summary of the Evidence

Only the assessed values of the portions of the Subject Property designated as “site” were disputed by the Taxpayer. The Taxpayer did not dispute the assessed values of any of the

¹⁵ Omaha Country Club v. Douglas County Board of Equalization, et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(2) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-1359 (3)-(4) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-132 (Reissue 2009).

improvements (including the residence and the outbuildings), or the assessed value of the agricultural land and horticultural land.

The property record card identified two portions of the Subject Property as “site.” One was the first-acre farm home site; the other was the 1.75 acres of farm site, containing all of the outbuildings on the Subject Property.²² The Assessor valued these sites, following Standard Operating Procedures for Rural Site Valuation Non-Ag Other Use²³ and Rural Land Model²⁴ for both years. Using these procedures, the first-acre farm home site was assessed at \$62,000 and the 1.75-acre farm site was valued at \$17,500 (\$10,000 per acre) in both years.²⁵

The County Board appointed Referees to conduct hearings on the Taxpayer’s protests in both tax years.²⁶ For tax year 2010, the Referee recommended adjustments to the assessments of the farm home site to \$20,000 (from \$62,000) and the farm site to \$3,885 (from \$17,500).²⁷ These adjustments were recommended without any explanation or bases to justify the adjustment. For tax year 2011, the Referee recommended adjustments to the assessments of the farm home site to \$30,000 (from \$62,000) and the farm site to \$13,125 (from \$17,500). By way of explanation, the Referee commented that the “market does not support [illegible] value for rural site.”²⁸ No evidence was received in the record that supported the Referee’s assertion. The Commission finds that neither Referee’s recommendations regarding the market value of the farm home site or farm site are clear and convincing evidence of those respective values.

In both tax years, the County Board did not make its determinations as recommended by the Referee. Instead, the County Board affirmed the values of the farm home site and farm site as they were made by the County Assessor.²⁹

The Taxpayer called Tim Ederer to testify. Ederer had been an Appraiser with the Sarpy County Assessor’s office since 2004. Ederer testified regarding the methodology used to determine the assessed value of the Subject Property for both tax years. He explained that the

²² See Exhibit 6:6 for tax year 2010, and Exhibit 31:6 for tax year 2011.

²³ See Exhibit 9 for tax year 2010 and Exhibit 34 for tax year 2011.

²⁴ See Exhibit 10 for tax year 2010 and Exhibit 35 for tax year 2011.

²⁵ Exhibit 6:6; Exhibit 31:6.

²⁶ This is authorized at Neb. Rev. Stat. §77-1502.01.

²⁷ Exhibit 5:1.

²⁸ Exhibit 30:1.

²⁹ Exhibits 1-2. The County Board is authorized to “make the order recommended by the referee or any other order in the judgment of the board of equalization required by the findings of the referee.” See Neb. Rev. Stat. §77-1502.01.

same Rural Land Model was used for both years, utilizing different sales from a two-year period as authorized by law.³⁰

The Taxpayer did not testify.

There is no evidence in the record to support the recommendations of the referees or the allegations of the Taxpayer. The Nebraska Supreme Court has held “[t]hat the Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet the burden of proving that value of her property was not fairly and proportionately equalized or that the valuation placed upon her property for tax purposes was unreasonable or arbitrary.”³¹

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 determinations made by the County Board for both tax years should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the value of the Subject Property for tax years 2010 and 2011 are affirmed.
2. The assessed values of the Subject Property for tax years 2010 and 2011 are:

³⁰ Title 350, ch 12 section 003.07A (3/09).

³¹ *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

10A-324

Land	\$224,727
Residential Improvement	\$101,736
Outbuildings	<u>\$ 22,654</u>
Total	\$349,117

11A-128

Land	\$274,697
Residential Improvement	\$103,812
Outbuildings	<u>\$ 22,662</u>
Total	\$401,171

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 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 be applicable to tax years 2010 and 2011.
7. This Decision and Order is effective for purposes of appeal on March 7, 2013.

Signed and Sealed: March 7, 2013.

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.