

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Larry Camenzind Farms, LLC
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 15A 0055, 15A 0056, 15A 0057,
15A 0058, 15A 0059, 15A 0060, 15A 0061
& 15A 0062

Decision and Order
Reversing the Decision of the Douglas
County Board of Equalization in
Case No. 15A 055

and Affirming the Decisions of the Douglas
County Board of Equalization in Case Nos:
15A 0056, 15A 0057, 15A 0058, 15A 0059,
15A 0060, 15A 0061 & 15A 0062

For the Appellant:

Larry Camenzind, Member
Pro Se

For the Appellee:

Shakil A. Malik
Deputy Douglas County Attorney

The appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of eight agricultural parcels located in Douglas County, Nebraska. The legal description of the Subject Property is found at Exhibits 1-8. The property record cards for the Subject Property are found at Exhibits 9-16.

II. PROCEDURAL HISTORY

In Case No. 15A 055, the Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$1,018,970 for tax year 2015.¹ Larry Camenzind Farms, LLC (the Taxpayer) protested this assessment to the Douglas County Board of

¹ Exhibit 1.

Equalization (the County Board). The County Board determined that the taxable value for tax year 2015 was \$1,018,970.²

In Case No. 15A 056, the County Assessor determined that the assessed value of the Subject Property was \$611,570 for tax year 2015.³ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$611,570.⁴

In Case No. 15A 057, the County Assessor determined that the assessed value of the Subject Property was \$52,670 for tax year 2015.⁵ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$52,670.⁶

In Case No. 15A 058, the County Assessor determined that the assessed value of the Subject Property was \$166,910 for tax year 2015.⁷ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$166,910.⁸

In Case No. 15A 059, the County Assessor determined that the assessed value of the Subject Property was \$54,010 for tax year 2015.⁹ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$54,010.¹⁰

In Case No. 15A 060, the County Assessor determined that the assessed value of the Subject Property was \$877,380 for tax year 2015.¹¹ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$877,380.¹²

In Case No. 15A 061, the County Assessor determined that the assessed value of the Subject Property was \$819,620 for tax year 2015.¹³ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$819,620.¹⁴

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 3.

⁷ Exhibit 4.

⁸ Exhibit 4.

⁹ Exhibit 5.

¹⁰ Exhibit 5.

¹¹ Exhibit 6.

¹² Exhibit 6.

¹³ Exhibit 7.

¹⁴ Exhibit 7.

In Case No. 15A 062, the County Assessor determined that the assessed value of the Subject Property was \$55,210 for tax year 2015.¹⁵ The Taxpayer protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$55,210.¹⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the 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 consolidated hearing on August 17, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.¹⁷ 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."¹⁸

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.¹⁹

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.²⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²¹

¹⁵ Exhibit 8.

¹⁶ Exhibit 8.

¹⁷ 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).

¹⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁹ *Id.*

²⁰ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

²¹ *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.²² 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.²³

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.”²⁴ 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.”²⁵ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²⁶

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.²⁷

“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.”²⁸ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”²⁹ Taxable value is the

²² 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).

²³ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

²⁴ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

²⁵ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

²⁶ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

²⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.³⁰ All real property in Nebraska subject to taxation shall be assessed as of January 1.³¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³²

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.³³

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³⁴ 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.³⁵

B. Summary of the Evidence

Larry Camenzind, a Member of Camenzind Farms, LLC, and Sally Goff, an employee of the Taxpayer testified on behalf of the Taxpayer. The Taxpayer asserted that some of the property record cards for the Subject Property were incorrect because they included improvements that had been removed from the land. Camenzind testified that in Case No. 15A 055 two animal shelters and a milk house were no longer on the property as of the effective date of January 1, 2015. Camenzind testified that in other cases improvements had been added or removed, but that those changes had occurred after January 1, 2015.

Stan Mlotek, a licensed appraiser and employee of the County Assessor, testified that he completed inspections of each of the five parcels of the Subject Property sometime during April of 2016. Based upon his observations, he was able to confirm Camenzind’s testimony. Mlotek

³⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

³¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

³² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³³ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

³⁴ Neb. Rev. Stat. §77-132 (Reissue 2009).

³⁵ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

further testified that after removing the entries for the animal shelters and the milk house the value of the improvements in Case No. 15A 055 would be reduced to \$115,853.³⁶ The Commission finds that Camenzind's testimony that the improvements were removed from the property prior to January 1, 2015 is clear and convincing evidence. Therefore, the actual value of the Subject Property in Case No. 15A 055 should be reduced to reflect those changes.

The Taxpayer also disputed the value of the improvement in Case No. 15A 056, however no evidence was offered to quantify what the value should be. No other evidence was adduced to persuade the Commission that any determination by the County Board was incorrect.

V. CONCLUSION

In Case No. 15A 055, there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. In Case No. 15A 055, the Commission also finds that there is clear and convincing evidence that the County Board's determination of value was unreasonable.³⁷

In Case Nos. 15A 056, 15A 057, 15A 058, 15A 059, 15A 060, 15A 061, and 15A 062, 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 determinations. In the same cases, the Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the determination by the County Board in Case No. 15A 055 should be vacated and reversed.

For all of the reasons set forth above, the determinations by the County Board in Case Nos. . 15A 056, 15A 057, 15A 058, 15A 059, 15A 060, 15A 061, and 15A 062 should be affirmed.

³⁶ See, Exhibit 9:9-10.

³⁷ 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.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property in Case No. 15A 055 for tax year 2015 is vacated and reversed.
2. The decisions of the Douglas County Board of Equalization determining the actual value of the Subject Property for tax year 2015 for Case Nos. 15A 056, 15A 057, 15A 058, 15A 059, 15A 060, 15A 061, and 15A 062 are affirmed.
3. The assessed value of the Subject Property for tax year 2015 is as follows:

15A 055	\$1,014,823
15A 056	\$611,570
15A 057	\$52,670
15A 058	\$166,910
15A 059	\$54,010
15A 060	\$877,380
15A 061	\$819,620
15A 062	\$55,210
4. 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.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2015.

8. This Decision and Order is effective for purposes of appeal on August 23, 2016.³⁸

Signed and Sealed: August 23, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁸ 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.