

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brian J. McAllister,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 13A 115 & 14A 195

Decision and Order Affirming the
Decisions of the Lancaster County
Board of Equalization

For the Appellant:

Jarrod Crouse,
Baylor Evnen Curtiss Gritmit & Witt, LLP

For the Appellee:

Ryan M. Swaroff
Deputy Lancaster County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a 20 acre parcel located at 17321 Pioneers Blvd. in rural Lancaster County, Nebraska. The legal description of the Subject Property is found at Exhibits 1 and 2. The property record cards for the Subject Property are found at Exhibits 3 and 4.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$142,100 for tax year 2013.¹ Brian J. McAllister (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board). The County Board determined that the taxable value for tax year 2013 was \$142,100.²

For tax year 2014, the County Assessor determined that the assessed value of the Subject Property was \$139,300.³ Brian J. McAllister protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2014 was \$139,300.⁴

¹ Exhibit 1.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 2.

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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a consolidated hearing on December 10, 2015.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is *de novo*.⁵ 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."⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

⁵ 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).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁹ *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.¹⁰ 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.¹¹

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.”¹² 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.”¹³ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

IV. VALUATION

A. Applicable 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.¹⁵

“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.”¹⁶ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁷ Taxable value is the

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ *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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

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.²¹

Parcel means “a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²² 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.”²³

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, all of which is contiguous to agricultural or horticultural land. This land will not be classified as agricultural or horticultural land and will not include a home site.²⁴

Farm home site means “land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision.”²⁵ This land must not be classified or assessed as agricultural or horticultural land.”²⁶

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-1359(1) (2014 Cum. Supp.).

²² Neb. Rev. Stat. §77-132 (Reissue 2009).

²³ Neb. Rev. Stat. §77-1359 (2) (2014 Cum. Supp.).

²⁴ Neb. Rev. Stat. §77-1359 (3) (2014 Cum. Supp.). 350 NAC Chapter 10, §002.09.

²⁵ Neb. Rev. Stat. §77-1359 (3) (2014 Cum. Supp.).

²⁶ 350 NAC Chapter 10, §002.09.

Wasteland includes “land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats.”²⁷

Grassland is “the state and condition of the range based on what it is naturally capable of producing. Grassland includes all types of grasses, permanent bromegrass, other introduced grasses, and native grasses used for grazing or mowed for hay.”²⁸

Land Capability Groups (LCG’s) are “groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification.”²⁹

Special valuation means “the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”³⁰

The Legislature “may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses.”³¹

B. Summary of the Evidence

Brian McAllister testified that the Subject Property was part of a larger farming operation and was used for grazing approximately 15 head of cattle. As was previously noted, the property consists of approximately twenty acres of land. The Taxpayer’s primary contention concerns the County’s determination that a farm site and a farm home site situated on the property should be

²⁷ 350 NAC Chapter 14, §002.54.

²⁸ 350 NAC Chapter 14, §002.31.

²⁹ 350 NAC Chapter 14, §002.41.

³⁰ Neb. Rev. Stat. §77-1343(5) (Reissue 2009).

³¹ Neb. Const. Art. VIII, §1(5).

valued as agricultural land and horticultural land (hereinafter referred to as agricultural land) and therefore valued for purposes of taxation at seventy-five percent of its actual value. The parties do not dispute the size or use of the farm site or farm home site for purposes of this appeal.

The Taxpayer also asserts that the County Assessor inappropriately assessed that portion of his property which is classified as Waste. The general idea of that assertion is that the assessment of wasteland in Lancaster County does not appropriately account for the presence of trees. He contends that some surrounding counties properly account for the presence of trees in the valuation of wasteland.

In addition, the Taxpayer contends that the County's assessment of grassland is not consistent with its reports to the Property Tax Administrator and is therefore flawed.

V. ANALYSIS

The parties essentially agree that the method utilized to arrive at the proper valuation of the Taxpayer's farm site and farm home site is a question of law. They do not contest the size or use of the farm site or farm home site. McAllister asserts that, because Neb. Rev. Stat. §77-1359 defines both "farm site" and "farm home site" in the same section of statute, where "agricultural land and horticultural land" is also defined, it must follow that farm sites and farm home sites are agricultural land and that all three definitions encompass land which must receive special valuation under Neb. Rev. Stat. §77-201(3).³² That argument, however, is flawed in that it ignores the specific language of Neb. Rev. Stat. §77-1359(1) defining agricultural land and horticultural land as 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. The argument is also without merit because it further ignores the clear language of the Rules & Regulations defining agricultural land which state, "[a]gricultural land and horticultural land does not include any land directly associated with any building or enclosed structure."³³ In other words, for the special valuation purposes described in Section 77-201, agricultural land does not include farm sites or farm home sites. We do not read Section 77-1359 as expanding or enlarging the special valuation concept contemplated by Section 77-201. The inclusion of the

³² See, Exhibit 4:14.

³³ Title 350 NAC, Chapter 11, §002.07 (Revised 3/15/09).

term “parcel” in Section 77-1359(1) requires the county assessor to exclude “land associated with a building or enclosed structure located on the parcel” when determining whether the parcel qualifies as agricultural land. It does not, however, serve to change the valuation method utilized for farm sites or farm home sites. Accordingly, the Taxpayer’s contention that farm sites or farm home sites constitute agricultural land is without merit.

With respect to the County Assessor’s method of valuing wasteland, the Commission is directed to Exhibit 48. There, the County Board, in response to the Taxpayer’s Interrogatories, stated that the County Assessor utilizes the values identified by lower classified grassland value and adjusts them downward approximately 50% to recognize the limited productivity of acres identified as wasteland. The County Board indicated in its Answers that the County Assessor uses an intuitive process utilizing his office’s special training and experience in valuing agricultural land. The appraisal of real estate is not an exact science.³⁴ While the County Assessor’s process is clearly subjective, there is no evidence indicating that it is arbitrary or unreasonable.

Concerning the valuation of grassland, the Taxpayer asserted that the valuation of grassland on the Subject Property was not consistent with its reports to the Property Tax Administrator. For both tax years 2013 and 2014, the County Assessor categorized the grassland on the Subject Property using the land capability groups of 1G and 2G. For tax year 2013, each acre of 1G grassland was assessed at \$2,625,³⁵ and the 2G grassland was valued at \$2,250³⁶ per acre.³⁷ The average acre value comparisons for 1G grassland and 2G grassland as reported in the 2013 Reports & Opinions of the Property Tax Administrator were \$2,539 and \$2,162 per acre respectively.³⁸ For tax year 2014, each acre of 1G grassland was again assessed at \$2,625,³⁹ and the 2G grassland was valued at \$2,250⁴⁰ per acre.⁴¹ The average acre value comparisons for 1G

³⁴ *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

³⁵ \$3,500 x 75%, as shown on Exhibit 3:5.

³⁶ \$3,000 x 75%, as shown on Exhibit 3:5.

³⁷ Exhibit 3:5.

³⁸ Exhibit 33:7. See also, the 2013 Report and Opinions of the Property Tax Administrator for Lancaster County, p37 (which may be found at: http://www.terc.ne.gov/2013/2013_Reports_and_Opinions/R&O_PDFs/55Lancaster.pdf).

³⁹ \$3,500 x 75%, as shown on Exhibit 4:9..

⁴⁰ \$3,000 x 75%, as shown on Exhibit 4:9..

⁴¹ Exhibit 4:9.

grassland and 2G grassland as reported in the 2014 Reports & Opinions of the Property Tax Administrator were \$2,539 and \$2,163 per acre respectively.⁴²

The disparities between these per acre values were explained in Exhibit 4, including an email from an employee of the Property Tax Administrator to the Taxpayer, dated July 7, 2014, where it was concluded that, “[t]his issue is a function of a report display and not indicative of an overvaluation issue.”⁴³ We find that the explanation given in Exhibit 4 is reasonable. We also find that there was no evidence that the 1G and 2G grassland on the Subject Property was assessed any differently than any other 1G or 2G grassland in Lancaster County for the same tax years.

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 decisions of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the taxable values of the Subject Property for both tax years 2013 and 2014 are affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$142,100.
3. The taxable value of the Subject Property for tax year 2014 is \$139,300.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

⁴² Exhibit 34:22. See also, the 2013 Report and Opinions of the Property Tax Administrator for Lancaster County, p. 22 (which may be found at: http://www.terc.ne.gov/2014/2014_Reports_and_Opinions/R&O_PDFs/55Lancaster-Revised4-17-14.pdf).

⁴³ See, Exhibit 4:38-40.

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 years 2013 and 2014.

This Decision and Order is effective for purposes of appeal on March 3, 2016.⁴⁴

Signed and Sealed: March 3, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁴⁴ 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.