

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

C & B Farms, LLC,
Appellant,

v.

Burt County Board of Equalization,
Appellee.

Case No: 15A 0015

Decision and Order Affirming the Decision
of the Burt County Board of Equalization

For the Appellant:

Lynn F. Bluml, Member
Pro Se

For the Appellee:

Edmond E. Talbot III
Deputy Burt County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a 160 acre agricultural parcel located in Burt County, Nebraska. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Burt County Assessor determined that the assessed value of the Subject Property was \$934,990 for tax year 2015. Lynn F. Bluml (the Taxpayer) protested this assessment to the Burt County Board of Equalization (the County Board) and requested an assessed valuation of \$738,248. The County Board determined that the taxable value of the Subject Property for tax year 2015 was \$934,990.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. The Commission held a hearing on August 9, 2016.

¹ Exhibit 1.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.² 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."³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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

² 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).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”⁹ 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.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. VALUATION OF THE SUBJECT PROPERTY

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.¹²

“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.”¹³ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

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

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

¹⁰ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

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

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁸

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

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.²⁰

“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.”²¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² 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.²³ 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.²⁴ 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.²⁵ 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.²⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁷ 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

¹⁸ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

²¹ *Neb. Const.*, Art. VIII, §1.

²² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²³ *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).

²⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁶ *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).

²⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

error of judgment [sic].”²⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁹

B. Summary of the Evidence

Jeff Quist, an employee with the County Assessor and a licensed appraiser, testified on behalf of the County Board. Quist testified the Subject Property was assessed using the sales comparison approach. He asserted that the Subject Property was compared to the sales of other agricultural parcels, some more superior and some less superior to the Subject Property, a process he called bracketing. Quist also testified that agricultural parcels in the same market area within the county were assessed uniformly in that the assessed value per acre for each soil type was the same for all properties.

Lynn Bluml, a Member of C & B Farms, LLC, testified that the sales comparison approach was inadequate to assess the Subject Property. He asserted that there were too few sales of truly comparable agricultural properties to be able to make a meaningful comparison of their prices to the value of the Subject Property. Bluml asserted that the better method to value the Subject Property would be the income approach. While the sales comparison approach and the income approach are both permissible mass appraisal methods,³⁰ the sales comparison approach is the preferred method.³¹ Bluml asserted that given the inadequacy of the sales available to compare to the Subject Property, the only appropriate valuation method would be the income approach.

In support of his assertion, Bluml provided an income approach analysis of the Subject Property.³² Based upon his income approach analysis, the actual value of the Subject Property for tax year 2015 was \$1,000,560.³³ Under Nebraska law, agricultural land and horticultural land

²⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁹ *Id.* at 673, 94 N.W.2d at 50.

³⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

³¹ NAC Title 350, Chapter 14, §006.03.

³² Exhibit 5. See also Exhibit 2:19-22.

³³ Exhibit 5:2. The Commission notes that this value is the result of a mathematical error. The quotient $\$30,320 / .03 = \$1,010,667$, not $\$1,000,560$.

is valued at 75% of its actual value.³⁴ Therefore, Bluml asserted that the Subject Property should be valued at \$750,420.³⁵

Bluml testified that in developing the income approach to value the Subject Property, he utilized a 3% capitalization rate. He explained that in his professional experience capitalization rates for Nebraska farm properties were typically 3% to 5%. Bluml did not provide the basis for why he chose 3% as the appropriate capitalization rate other than that he offered that the lower end of the 3% to 5% range would generate a higher value.

Bluml also testified that he included the actual income and expenses experienced by the Subject Property at the relevant time period. His income approach calculation did not take into account the income and expenses of any other property to determine typical income and typical expenses. Since it is difficult to quantify management decisions, “typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations.”³⁶

No income and expense data was analyzed for any property other than the Subject Property. The appraisal and assessment literature provides two choices: “(1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases.”³⁷ Quist testified that the Assessor had not completed a study of agricultural properties in Burt County in order to gather data that could be utilized to develop an income approach for the Subject Property. He asserted that he did not have enough information to verify whether the income and expense information provided by Bluml was typical of the market, nor did he have enough information to determine an appropriate capitalization rate. Based upon the evidence in the record, the Commission finds that the income approach utilized by the Taxpayer does not constitute clear and convincing evidence that the determination of taxable value by the County Board was arbitrary or unreasonable.

³⁴ Neb. Rev. Stat. §77-201(2) (Reissue 2009).

³⁵ $\$1,000,560 \times .75 = \$750,420$. When including the mathematical error corrected above, the value would be \$758,000 ($\$1,010,667 \times .75 = \$758,000$).

³⁶ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011) (emphasis in original).

³⁷ *Id.*, at 341.

The Subject Property consisted of 160 acres, including 91.5 acres of soil classification 1D1, and 64.5 acres of soil classification 3D1.³⁸ The 1D1 acres were assessed at \$6,500 per acre. The 3D1 acres were assessed at \$5,275 per acre. No evidence was presented to demonstrate that the soil types of other agricultural properties in the same market area were valued at less per acre than the Subject Property.³⁹ The Commission finds, based upon the evidence received, that the Subject Property was valued uniformly with other comparable agricultural properties in the same market area in Burt County.

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 Burt County Board of Equalization determining the value of the Subject Property for tax year 2015 is affirmed.
2. The taxable value of the Subject Property for tax year 2015 is \$934,990.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Burt County Treasurer and the Burt County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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.

³⁸ Exhibit 2:29. The Subject Property also contained four acres assessed as Road, with no value.

³⁹ See e.g., Exhibit 2:79-80, where for tax year 2015, the 1D1 soil type of the agricultural property was valued at \$6,500 per acre and the 3D1 soil type was valued at \$5,275 per acre.

6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective for purposes of appeal on August 11, 2016.⁴⁰

Signed and Sealed: August 11, 2016

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁴⁰ 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.