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1-1-2004

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Property Valuation May Be Reduced by Proximity to Livestock Operation

J. David Aiken[1]

Summary and Implications

Livestock odors must be taken into account when counties determine the fair market value of rural residences for property tax purposes. Livestock odors may reduce property values and property valuation. Such reductions may lead to legal nuisance liability claims against livestock producers who are not protected by the Nebraska Right to Farm Act, and may also become a factor in livestock facility zoning decisions.

In Nebraska, land and buildings are valued at their fair market value for purposes of property taxation. Residential and commercial real estate is valued at 92-100% of actual value (i.e. fair market value) and agricultural real estate is valued at 74-80% of actual value. Fair market value for property tax valuation purposes may be determined by (1) comparative sales, (2) income or (3) cost. In *Livingston v Jefferson County Board of Equalization*, 10 Neb App 934 (2002), the Nebraska Court of Appeals ruled that the county board of equalization erred in not considering a rural residence's proximity to a swine farrowing facility in determining the residence's fair market value.

The taxpayer started a swine farrowing operation in 1990. In 1999 the taxpayer built a house approximately 3/4 of a mile from his farrowing facility at a cost of $328,649.

In 2000 the county valued the house (excluding the land) at $399,321. The taxpayer objected to this valuation for three reasons. First, the house was approximately 3/4 of a mile from a swine farrowing facility with 5,200 sows. Second, the taxpayer had obtained an easement to apply hog manure to cropland across the road from the house. Third, the house was not served by a public road but only by a private road that at times could be used only by a four-wheel drive vehicle. The taxpayer's appraiser discounted the value of the house (based on comparable sales) by 30% for livestock odors and another 10% for its remote location.

In Nebraska, the county board hears property valuation protests, sitting as the county board of equalization. The Jefferson County board of equalization refused to modify its valuation of the Livingston property, and the county's determination was upheld on appeal by the state Tax Equalization and Review Commission (TERC). Both the county and TERC refused to consider the effects of livestock odors and the residence's remote location as being factors that would affect the property's market value.

Normally courts will presume that county officials have properly valued property for property tax purposes, and a county board of equalization need not present evidence to justify its valuation. In this case, however, the Nebraska Court of Appeals concluded that the taxpayer had successfully overcome this legal presumption that the county's valuation was correct. The court determined that it was reversible error for the county and TERC to refuse to consider the effects of the swine facility, the manure easement, and the house's remote location on its property value. The fact that the swine facility was owned by the taxpayer did not mean that the nearness of the swine facility could not be a factor in determining the residence's market value.

The court also ruled that the county board of equalization and TERC erred in refusing to consider whether the taxpayer had "overbuilt," i.e. spent more on his residence than he could realistically expect to receive if the house were sold. The taxpayer testified that he would be lucky to receive $200,000 for the house (which probably was reasonable, given its remote location and the swine odors). The court quoted an example where a house costing $150,000 and built in a neighborhood where the average house was worth $75,000, would likely have a property value of less than its $150,000 cost because the house was "overbuilt" (or too expensive) for the neighborhood.

The county failed to produce any evidence (1) that the taxpayer's house was not overbuilt and (2) that the swine odors would not affect the property value. The court of appeals ruled that (1) failure to consider whether the house was overbuilt and (2) failure to consider the impact of hog odors on property value both were reversible error. The court noted that these factors certainly would come into play when the house was sold, and would certainly influence the price paid after negotiations between a willing buyer and a willing seller. The court quoted Nebraska livestock nuisance decisions as proof that the presence of hog odors could affect what a willing buyer would be willing to pay for the house. The court ordered the county to consider the impacts of hog odors and remote location in valuing the taxpayer's property.

The court concluded that "It was arbitrary for the [county] Board and TERC to ignore the effect that the nearby hog facility would have on the house's fair market value in the ordinary course of trade. No reasonable fact finder could conclude that in the real estate marketplace, a potential buyer would not notice, and react economically, to having a large hog facility very nearby while living in a remote location."

Commentary

The Court of Appeal's characterizations of the Livingston farrowing facility as being a "large hog facility" and the 3/4 mile distance between the farrowing facility and the Livingston residence as being "very near" are revealing and worth pondering by livestock producers and county zoning officials. Several zoned counties with livestock facility setbacks would not require a 3/4 mile setback for a confinement of just over 2000 animal units. Yet the court's comments in *Livingston* suggest that the 3/4-mile distance in that case was inadequate, contributing to a significant property value reduction.

It will be interesting to see whether this decision encourages rural residents living near livestock facilities to seek property valuation reductions due to the impact of livestock odors on the value of their residence. It also will be interesting to see if neighbors who receive such valuation reductions will then sue the livestock producer to recover the lost property value. If the livestock operation had been developed before the neighbor's residence, the livestock operator would not be liable for any lost property value under the Nebraska Right to Farm Act. However, if the residence predated the livestock operation or a livestock facility expansion, the livestock producer would not be legally protected. The potential effect of new or expanded livestock facilities on the valuation of neighboring properties may become a more important factor to those county boards making controversial livestock facility zoning decisions.

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