

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
10/3/2023 9:31 AM
AUDREY GARCIA
CLERK OF THE COURT
Dominique Sanchez

KENNETH DeHOFF &
KATHLEEN DeHOFF,

Appellants/Cross-Appellees
Respondents,

Case No. D-1329-CV-2023-01382

versus

LINDA P. GALLEGOS,
in her official capacity as
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

**SANDOVAL COUNTY ASSESSOR LINDA P. GALLEGOS'S
PETITION FOR A WRIT OF CERTIORARI TO THE
SANDOVAL COUNTY VALUATION PROTESTS BOARD**

Linda P. Gallegos, in her official capacity as Sandoval County Assessor, petitions for a writ of certiorari under Rule 1-075, NMRA, directed to the Sandoval County Valuation Protests Board.

1. A notice of appeal was filed of this decision under this case number by appellants/cross-appellees/respondents Kenneth DeHoff and Kathleen DeHoff.
2. A notice of cross appeal was then filed by Gallegos.
3. Because the DeHoffs have filed a motion challenging the propriety of Gallegos's notice of appeal, this petition is being filed to ensure that Gallegos's objections to the Board's decision will be heard by this Court.

4. Gallegos seeks review of a decision of the Sandoval County Valuation Protests Board, in *In re Protest of DeHoff*, namely the “Decision and Order,” filed September 6th, 2023. A copy of that order is attached as Exhibit A.
5. The Board ruled on a protest of the valuation of real estate made by the Sandoval County Assessor.
6. The party seeking a writ of certiorari is Linda P. Gallegos, in her official capacity as Sandoval County Assessor, 1500 Idalia Road, Building D, P.O. Box 40, Bernalillo, New Mexico 87004.
7. Gallegos is the appellant/cross-appellee in this matter.
8. The other parties to this matter are Kenneth DeHoff and Kathleen DeHoff, 66 Bad Coyote Place, Corrales, New Mexico 87048.
9. The DeHoffs are the appellants/cross-appellees in this matter.
10. Venue is proper in the Thirteenth Judicial District Court sitting in Sandoval County as the Board’s hearing in this matter occurred in Sandoval County, the property at issue is located in Sandoval County, and all parties are residents of Sandoval County.
11. This petition is being filed within thirty days of the order of the Sandoval County Valuation Protest Board in compliance with Rule 1-075(D), NMRA.
12. A certificate that satisfactory arrangements have been made with the agency for preparation and payment for the transcript of the proceedings has already been filed in this case by Gallegos and the agency has already filed the transcript. Nevertheless, a second certificate of satisfactory arrangements is being submitted with this petition. Thus Gallegos has complied with Rule 1-075(E)(3), NMRA.

13. A copy of this petition is being served on the DeHoffs in compliance with Rule 1-075(E)(1), NMRA, and the proof of service in compliance with Rule 1-075(E)(2), NMRA, appears below.

14. Gallegos has complied with all requirements of Rule 1-075, NMRA, and is entitled to the relief sought.

Prayer for Relief

Gallegos requests the Court:

1. Grant the petition for a writ of certiorari to ensure her appeal may be heard.
2. Grant all other relief at law or in equity that she may be entitled to.

For the convenience of the Court, a proposed order granting the petition is being submitted to the Court's e-mail account.

(Signature Page Follows)

Respectfully submitted:

MICHAEL ESHLEMAN,
SANDOVAL COUNTY ATTORNEY

/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney
John M. Butrick,
Deputy County Attorney
Eric J. Locher,
Assistant County Attorney
Post Office Box 40
Bernalillo, New Mexico 87004
505-404-5812 (Eshleman)
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meshleman@sandovalcountynm.gov
jbutrick@sandovalcountynm.gov
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Certificate of Service

I certify that on October 3rd, 2023, I e-mailed a copy of this document to:

Kenneth & Kathleen DeHoff
66 Bad Coyote Place
Corrales, New Mexico 87048
ksdehoff@comcast.net
ksdehoff@netwks.com

/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

KENNETH DeHOFF &
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Appellants/Cross-Appellees
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EXHIBIT A

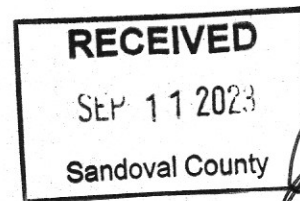
TO THE

PETITION OF LINDA P. GALLEGOS

BEFORE THE SANDOVAL COUNTY
VALUATION PROTESTS BOARD

IN THE MATTER OF THE PROTEST OF:

Kenneth & Kathleen DeHoff
66 Bad Coyote Place
Corrales, NM 87084



DECISION AND ORDER

This matter came on for hearing before the Sandoval County Valuation Protests Board (hereinafter called the "Board") on the 8th day of August 2023 at 9:00 AM. All applicable Statutes, Property Tax Division regulations, arguments, and evidence presented at the hearing were fully considered by the Board, and the Board, being fully informed in the premises, finds as follows:

1. The Board has jurisdiction of the subject matter and parties.
2. The property owner was fully informed as to all statutes and Property Tax Division regulations governing procedures before the Board and was further informed to the method of valuation used by the Sandoval County Assessor in determining the value of the subject property.
3. The Assessor appeared in person and was represented by Jake Ortiz y Pino, Edward Olona, and Lawrence Griego.
4. The property owners appeared in person.
5. Three vacant parcels are under protest identified by Parcel Codes; 1-017-070-085-125, assessed at \$195,044; 1-017-070-074-118, assessed at \$204,000; and 1-017-070-124-119, assessed at \$204,000. The property owners amend their values to \$153,000, \$160,000, and \$160,000 respectively.
6. The fourth parcel under protest is improved with a house and barn and is identified as Parcel code 1-017-070-022-122. The Assessor amends the assessed value for this parcel from \$1,163,993 to \$986,368. The property owners assert a value of \$793,000.
7. We start with the fundamental proposition of New Mexico law that "Values of property for property taxation purposes determined by the ... assessor are presumed to be correct." NMSA 1978, Section 7-38-6. In order to rebut that presumption, "the taxpayer has the burden of coming forward with evidence showing that the values for property taxation purposes ... are incorrect." Thus, we look to the property owner to show that "the assessor did not follow the

statutory provisions of the Act or by presenting evidence tending to dispute the factual correctness of the valuation." *New Mexico Baptist Foundation v. Bernalillo County Assessor*, 93 N.M. 363 (Ct. App. 1979).

8. The Board is bound to make our decision based on substantial and competent evidence. NMSA 1978, Section 39-3-1.1; Rule 1-074 NMRA. "A valuation may not be placed on a property arbitrarily." *Cibola Energy Corporation v. Roselli*, 105 N.M. 774 (Ct. App. 1987).
9. "What is most important is that the appraisers, the assessor and the protest board exercise an honest judgment based upon the information they possess or are able to acquire." *First National Bank v. Bernalillo County Valuation Protests Board*, 90 N.M. 110,114, 560 P.2d 174,178 (N.M. Ct. App. 1977).
10. The Board interprets the statutory requirements that one of the three board members must have demonstrated experience in the field of valuation of property and that one be an employee of the Property Tax Division (NMSA 1978, Section 7-38-25) to be an indication that the legislature expects us to review the evidence in front of us in light of our training and experience in the area of appraisal practice. See also, NMAC Section 3.6.7.36(H)(1), ("Board members may use their knowledge and experience to evaluate evidence admitted.")
11. "[T]he value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or and combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority ... shall apply generally accepted appraisal techniques." NMSA 1978, Section 7-36-15(B).
12. Generally accepted appraisal techniques often provide more specific guidance as to which valuation approach is an appropriate method of solving a given problem. See generally, Appraisal Institute, *The Appraisal of Real Estate*, (10th ed. 1992); International Association of Assessing Officers, *Property Assessment Valuation*, (2nd ed. 1996).
13. Evidence of the assessed value of comparable properties is not relevant to show valuation, *Peterson Properties v. Valencia County Valuation Protests Board*, 89 N.M. 239 (Ct. App. 1976), and is not relevant to a property owner's case absent proof of "some well-defined and established scheme of discrimination or some fraudulent action," *Skinner v. New Mexico State Tax Commission*, 66 N.M. 221 (S. Ct. 1959), which we find entirely lacking here.

14. We cannot assume that the current and correct market value equates to the assessed valuation of surrounding properties. Rather, in our experience, it often does not.
15. This results in a situation with a certain amount of imbedded inequity, but not a situation that we are at liberty to rectify in the absence of appropriate data to support our order. See, e.g., *Hannahs v. Anderson*, 126 N.M. 1, 1998-NMCA-152 (S. Ct. 1998) ("mathematical exactitude" is not required).
16. The property owners timely filed an application for the special method of valuation for irrigated use with the Sandoval County Assessor for the three vacant parcels of land.
17. NMSA 1978, Section 7-36-20A provides, "The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made."
18. The property owners testified the land was not used primarily for agricultural purposes, nor had the capacity to produce agricultural products in the year preceding the tax year they applied. Therefore, the Board finds the presumption of correctness in favor of the Assessor has not been overcome and upholds the Assessor's denial of the special method of valuation for agricultural purposes for the three vacant parcels.
19. For the valuation of the three vacant parcels of land the property owner argues the Assessor is valuing their land with dissimilar comparables, and the property owner presented additional sale data, assessed values, and analysis.
20. The property owner presented an exhibit Agenda with photos and argument, an exhibit of "Evidence" containing market data and analyses, and an exhibit of the agricultural applications submitted to the Assessor's office.
21. The Assessor presented three vacant land sales and photographs, the opinion from *In re Alexander* (1999-NMCA-021, 126 N.M. 632, 973 P.2d 884), six improved sales in support of the amended value for the parcel improved with the residence and barn, and additional case law including *In re First Nat'l Bank*, 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977), and *Hannahs v. Anderson*, 126 N.M. 532, 972 P.2d 351 (S. Ct. 1998).
22. The property owner's evidence and testimony convinced the Board that the land values in south Corrales are not comparable to north Corrales. Thus, for

the three vacant parcels, the Board finds the property owner met and overcame the statutory presumption of correctness as to value.

23. For the parcel improved with the house and barn the Board finds the property owner did not overcome the statutory presumption of correctness, and the Board further notes the evidence and testimony supported the assessor's amended value.

The Board, therefore, orders the following changes to the 2023 valuation records of the Sandoval County Assessor with respect to the following described properties:

Property Code: 1-017-070-085-125

FROM: \$195,044
TO: \$153,000

Property Code: 1-017-070-074-118

Property Code: 1-017-070-124-119

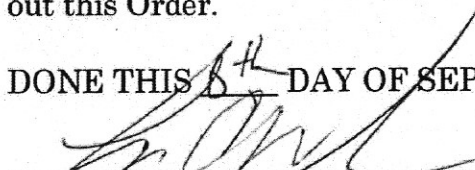
FROM: \$204,000
TO: \$160,000

Property Code: 1-017-070-022-122

FROM: \$1,163,993
TO: \$986,368

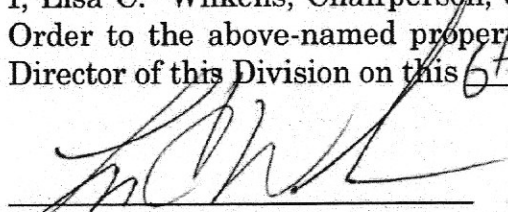
The Board directs the Sandoval County Assessor to take appropriate action to carry out this Order.

DONE THIS 6th DAY OF SEPTEMBER 2023



Lisa C. Wilkens, Chairperson
Sandoval County Valuation
Protests Board

I, Lisa C. Wilkens, Chairperson, certify that I sent, by certified mail, a copy of this Order to the above-named property owner, the Sandoval County Assessor, and the Director of this Division on this 6th day of September 2023.



Lisa C. Wilkens, Chairperson