

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

C and D Family Farms,  
Appellant,

v.

Nemaha County Board of Equalization,  
Appellee.

Case No: 15A 0137 & 15A 0138

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

Background

1. The Subject Properties are
  - a. a 157.57 acre agricultural parcel in Case No. 15A 0137 and
  - b. a 159.25 acre agricultural parcel in case No. 15A 0138,located in Nemaha County, Nebraska. The legal descriptions of the Subject Properties can found in the Case File.
2. The Nemaha County Assessor (the County Assessor) assessed the Subject Properties at
  - a. \$619,425 for tax year 2015 and
  - b. \$637,105 for tax year 2015.
3. The Taxpayer protested these values to the Nemaha County Board of Equalization (the County Board) and requested assessed values of
  - a. \$278,741 for tax year 2015 and
  - b. \$286,697 for tax year 2015.
4. The County Board determined that the taxable values of the Subject Properties were
  - a. \$619,425 for tax year 2015 and
  - b. \$637,105 for tax year 2015.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 7, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.

7. Mark A. Caspers, Mary Andrew, and Blane Anthony were present at the hearing for the Taxpayer. Mallory Lempka, Nemaha County Assessor, was present for the County Board.
8. This appeal and several other appeals were consolidated for hearing. Mark Caspers presented information to the Commission for all appeals in the consolidated hearing.

#### Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
11. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>3</sup>
12. Regarding agricultural land and horticultural land, the Constitution of the State of Nebraska states:

[T]he Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land.<sup>4</sup>

13. The Legislature has exercised its Constitutional delegation of power with respect to agricultural land and horticultural land as follows:

Except as provided in subsections (2) through (4) of this section, all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value. Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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).

<sup>3</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>4</sup> *Neb. Const.*, Art. VIII, §1(4).

of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.”<sup>5</sup>

14. In addition, agricultural land and horticultural land is not equalized with other real property:

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.<sup>6</sup>

15. The Nebraska Supreme Court has concluded that “the constitution does not require uniformity between the class of agricultural and horticultural land and other types of real estate. Therefore, it is [not] required or proper to equalize the value of nonagricultural, nonhorticultural land with the value of agricultural and horticultural land.”<sup>7</sup>

#### Burden of Persuasion

16. When considering an appeal 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.”<sup>8</sup> 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.”<sup>9</sup>

17. 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.<sup>10</sup>

18. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup>

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<sup>5</sup> Neb. Rev. Stat. §77-201(1), (2) ((2016 Cum. Supp.).

<sup>6</sup> Neb. Rev. Stat. §77-1359 ((2016 Cum. Supp.).

<sup>7</sup> *Krings v. Garfield Cty. Bd. Of Equal.*, 286 Neb. 352, 361, 835 N.W.2d 750, 756 (2013).

<sup>8</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

19. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>12</sup>

#### Findings of Fact & Conclusions of Law

20. Mark Caspers made a motion that the filing fees for all of the consolidated appeals be returned to the Taxpayers. That motion was taken under advisement.

21. Mark Caspers made a motion for default judgement since no member of the County Board was present, since the Nemaha County Attorney was not present, and since no Minutes of County Board meetings indicated that Mallory Lempka may appear at the hearing on behalf of the County Board. That motion was denied.

22. Mark Caspers asserted that the Subject Properties were entitled to “proportionality” equalization relief because certain commercial parcels in Nemaha County had been assessed for tax year 2015 at only a fraction of their market values.

23. The Nebraska Constitution requires that agricultural land be a separate class of land to be assessed at 75% of market value. The Commission does not have the authority to equalize the assessment of agricultural land with any other class of land. It is not required or proper to equalize the value of property of the commercial class with the value of agricultural land.<sup>13</sup>

24. The Taxpayer provided no information regarding the actual values of the Subject Properties.

25. The Taxpayer also argued that the County Board was arbitrary or unreasonable in how it conducted the Protest proceedings. However, the Commission finds that the Taxpayer has failed to present clear and convincing evidence of any values other than the County Board determinations of taxable values of the Subject Properties.

26. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

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

<sup>12</sup> 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).

<sup>13</sup> See, Neb. Const., Art. VIII, §1(4), Neb. Rev. Stat. §77-201(1), (2) ((2016 Cum. Supp.), Neb. Rev. Stat. §77-1359 (2016 Cum. Supp.), and *Krings v. Garfield Cty. Bd. Of Equal.*, 286 Neb. 352, 361, 835 N.W.2d 750, 756 (2013).

27. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The request that the filing fees for the appeals be returned to the Taxpayer is denied.
2. The Decisions of the County Board of Equalization determining the taxable values of the Subject Properties for tax year 2015, are Affirmed.
3. The taxable value of the Subject Properties for tax year 2015 are:
  - a. \$619,425 in Case No. 15A 0137 and
  - b. \$637,105 in Case No. 15A 0138.
4. This Decision and Order, if no further action is taken, shall be certified to the Nemaha County Treasurer and the Nemaha County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 on August 11, 2017.

Signed and Sealed: August 11, 2017

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Robert W. Hotz, Commissioner