

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

C&B Farms LLC,  
Appellant,

v.

Burt County Board of Equalization,  
Appellee.

Case Nos: 16A 0122 & 17A 0017

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

**For the Appellant:**  
Lynn Bluml, Member  
C&B Farms LLC

**For the Appellee:**  
Edmond E. Talbot III  
Deputy Burt County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 160 acre 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 6.

**II. PROCEDURAL HISTORY**

For tax year 2016, the Burt County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$990,990.<sup>1</sup> C&B Farms LLC (the Taxpayer) protested this assessment to the Burt County Board of Equalization (the County Board) and requested an assessed valuation of \$738,248.<sup>2</sup> The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$990,990.<sup>3</sup>

The County Assessor determined that the assessed value of the Subject Property was \$990,990 for tax year 2017.<sup>4</sup> The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$738,248.<sup>5</sup> The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$990,990.<sup>6</sup>

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<sup>1</sup> Ex. 1:1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Ex. 2:1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on September 20, 2018, with Commissioner Hotz presiding. Exhibits 1 through 15, 17, and 22 were admitted in the course of the hearing. Exhibits 18 through 21 were exchanged but not offered.

Exhibit 16, offered by the Taxpayer, is selected pages of a report entitled *Nebraska Farm Real Estate Market Highlights 2016-2017*, authored by Jim Jansen of the University of Nebraska-Lincoln Department of Agricultural Economics and published by the University. The County Board objected to the receipt of this exhibit as inadmissible hearsay, and further noted that the full report contained a disclaimer indicating that the information contained in the report was not intended for use in valuing individual properties. The disclaimer, which reads in part, “Due to the inherent limitations of this survey ... information in this report should not be used to ... value a particular parcel of real property for ... property taxes...” was not included in the pages offered by the Taxpayer. Although we received the report as an exhibit in the course of the hearing, upon review, we find that the report is unreliable for the purpose of establishing the valuation of any specific property and we gave it little weight in reaching our decision in these appeals.

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board is *de novo*.<sup>7</sup> 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.<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>

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<sup>7</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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>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.*

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

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> 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.<sup>13</sup>

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.<sup>14</sup> The Commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>15</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>16</sup>

#### IV. VALUATION & EQUALIZATION

##### A. Law

Under Nebraska law,

Actual 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.<sup>17</sup>

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<sup>10</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>13</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>14</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

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.<sup>18</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>19</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of the Nebraska Revised Statutes and has the same meaning as assessed value.<sup>20</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>21</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>22</sup> Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>23</sup>

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>24</sup> 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.<sup>25</sup> If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.<sup>26</sup>

## **B. Facts & Analysis**

Three witnesses testified at the hearing: Lynn Bluml, a member of C & B Farms LLC; Joni Renshaw, the County Assessor; and Jeffrey Quist, a Certified General Appraiser who is an employee of the County Assessor. The documentary evidence established that, aside from roads, which are assessed at a value of \$0 per acre, the Subject Property is composed entirely of soil

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<sup>18</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>19</sup> *Omaha Country Club* at 180, 829.

<sup>20</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>21</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018)

<sup>22</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. §77-201(2) (Reissue 2018).

<sup>24</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>25</sup> *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>26</sup> *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

types falling into the 1D1 and 3D1 land capability groups (LCGs).<sup>27</sup> Each acre of the Subject Property with an LCG of 1D1 was valued at \$6,890, and each acre of the Subject Property with an LCG of 3D1 was valued at \$5,590. The Subject Property is located in Market Area 1 of Burt County.

Mr. Bluml expressed the opinion that the Subject Property was assessed in excess of market value. His central arguments were that values of agricultural land were falling, and that the number of acres encompassed by the County Assessor's sales file was insufficient to reliably reflect the actual market value of such acres. Due to this alleged insufficiency, the Taxpayer asserted that sales from neighboring counties should be considered in setting the values of Burt County properties.

Regarding the market value of the Subject Property, the Taxpayer's only basis for quantifying market value was utilizing data from the report by Mr. Jansen of the University of Nebraska. As discussed above, this report was not prepared for the purpose of valuing individual properties, Mr. Jansen was not available for cross-examination by the County Board,<sup>28</sup> and we give the report little weight in considering these appeals as a whole. To the extent that Mr. Jansen's methodology can be gleaned from the excerpts of his report that were offered into evidence, it is clear that the per acre values proposed by the Taxpayer represent values for the Northeast Agricultural Statistics District, rather than values specific to Burt County.<sup>29</sup> The report does not constitute competent evidence of the value of the Subject Property.

As to the number of acres encompassed by the sales file, the Taxpayer offered a decision of the Commission related to appeals for tax year 2005, in which the Commission considered sales of land from neighboring Perkins County when determining the value of a parcel in Keith County.<sup>30</sup> Several factors distinguish that case from the present appeal. The case dealt with a very specific factual circumstance: dryland which had irrigation potential prior to July 1, 2004, when a moratorium on well drilling went into effect.<sup>31</sup> Because no sales of similarly situated property occurred in Keith County after July 1, 2004, the Commission considered sales in

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<sup>27</sup> Ex. 6. The 1D LCG includes soils that have the capability to produce high to very high yields of either grain or forage crops and food and crops produced for processing. The 1D1 designation is a further refinement indicating a high production capability within the 1D category. The 3D LCG includes soils that have the capability to produce average to moderately low yields of the same crops, and the 3D1 designation indicates a high production capability within the 3D group. See 350 Neb. Admin. Code Ch. 14 § 004.

<sup>28</sup> See Neb. Rev. Stat. § 77-5016(5) (Reissue 2018).

<sup>29</sup> Ex. 16:11, which was page 43 of the original report.

<sup>30</sup> Ex. 22, *V. David-Sons LLC v. Keith County Board of Equalization*, Case Nos. 05A-076, 05A-077, 05A-078 & 05A-079.

<sup>31</sup> Ex. 22:8-9.

Perkins County. In the present appeal, the 2016 sales file included sales of 251 1D1 acres and 862 3D1 acres, and the 2017 sales file included sales of 312 1D1 acres and 833 3D1 acres. Nothing in the record suggests that the 1D1 and 3D1 acres of the Subject Property are substantially dissimilar to the acres reflected in the sales file. Additionally, the record in the prior decision contained extensive evidence as to the comparability of property in Perkins County and Keith County.<sup>32</sup> No such evidence was adduced in the present appeal.

Ms. Renshaw testified about the methodology used by her office in assessing the Subject Property and other agricultural land in Burt County. She testified that land is classified based on soil type and productivity into LCGs. A sales file is compiled using information from all sales in a specific market area over a three year study period ending on September 30 preceding the assessment date.<sup>33</sup> Each sale was then analyzed on the basis of land use, soil types, and LCGs. Based on this analysis, Ms. Renshaw determined the per acre value for each LCG within Market Area 1. The same values were applied to every parcel, including the Subject Property, throughout the market area, based on the LCGs of which each parcel is composed. Ms. Renshaw testified that the list of values found at Exhibits 9:3 and 9:5 reflected the per acre values she applied to every parcel in the county; these exhibits show the same values that were applied to the Subject Property. She also testified that she performed this assessment of the Subject Property in accordance with the laws and regulations of the State of Nebraska.

The record contains some contradictory evidence on the question of whether the values applied to the Subject Property were in fact applied to every other acre of the same LCG within the county. Exhibit 8 is a reproduction of portions of the 2016 and 2017 Reports and Opinions of the Property Tax Administrator for Burt County.<sup>34</sup> The reports are a crucial source of information in the Commission's determination of whether property is assessed within an acceptable range, and the Commission generally relies upon the accuracy of the information contained therein.

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<sup>32</sup> Ex. 22:9-15.

<sup>33</sup> As noted above, real property is always assessed as of January 1 of the tax year in issue. So, for tax year 2016, the three year period for sales is October 1, 2012, through September 30, 2015. For tax year 2017, the three year period is October 1, 2013, through September 30, 2016.

<sup>34</sup> Nebraska law requires the Property Tax Administrator to prepare annual reports and opinions on average assessment levels, degrees of assessment uniformity, and overall compliance with assessment requirements for each major class of property in each county. Neb. Rev. Stat. § 77-1327 (Reissue 2018). These reports and opinions are then transmitted to the Commission and to each county assessor as part of the Commission's annual statewide equalization process. Neb. Rev. Stat. § 77-5027 (Reissue 2018).

The reports indicate that the average value of an acre of 1D1 in Burt County, Market Area 1, was \$6,764 for 2016 and 2017; they also indicate that the average value of an acre of 3D1 in the same market area was \$4,830 for 2016 and \$4,835 for 2017.<sup>35</sup> However, if the same value had been applied to each acre based on LCG, the averages should equal the values applied; *e.g.*, if every acre of 1D1 in the market area was valued at \$6,890, then the average value of all 1D1 acres in the market area would necessarily equal \$6,890. Ms. Renshaw offered several possible explanations for this apparent discrepancy, but she could not testify with certainty as to the reason.

None of the comparable sales offered by the Taxpayer occurred in 2016 or 2017, so any accompanying breakdown of assessed value by LCG reflects older per acre values.<sup>36</sup> Of the comparable sales offered by the County Board, only two took place in 2016 or 2017. The first of these,<sup>37</sup> involving land sold to Lane A. Rogers, did not include any 1D1 or 3D1 acres.<sup>38</sup> However, the value assigned to each LCG corresponds to the value listed in Ex. 9:3.<sup>39</sup> The second 2016 sale,<sup>40</sup> involving land sold to Justin M. Smith, included 3D1 acres, which were valued at \$5,590 per acre; this is the same amount listed in Ex. 9:3 and the same as the assessed value for the Taxpayer's 3D1 acres.<sup>41</sup> All remaining acres of this second 2016 sale are assessed at values corresponding to the list at Ex. 9:3.<sup>42</sup>

There is no evidence in the record that all acres of a given LCG within Market Area 1 in Burt County were not assessed at the same value for 2016 and 2017, and those values correspond to the list of values at Ex. 9:3 and 9:5 rather than the average acre value comparison found in the Reports and Opinions for 2016 and 2017. The reason for this discrepancy remains unknown, but the evidence adduced at the hearing indicates that acres with the same LCG were assessed at the same value throughout Market Area 1, and the value was determined based upon comparable sales in the same market area. Accordingly, the Taxpayer has not presented sufficient competent evidence to show that the Subject Property was incorrectly valued or was not equalized with similar properties.

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<sup>35</sup> Ex. 8:3 and 8:6.

<sup>36</sup> See Ex. 12 through 15.

<sup>37</sup> Ex. 7:12 through 7:16.

<sup>38</sup> Ex. 7:13 and 7:15.

<sup>39</sup> *Id.*

<sup>40</sup> Ex. 7:17 through 7:21.

<sup>41</sup> Ex. 7:20.

<sup>42</sup> Ex. 7:18 and 7:20.

## 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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Burt County Board of Equalization determining the value of the Subject Property for tax years 2016 and 2017 are affirmed.<sup>43</sup>
2. The taxable value of the Subject Property for tax years 2016 and 2017 is \$990,990.
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 (Reissue 2018).
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.
6. This Decision and Order shall only be applicable to tax years 2016 and 2017.
7. This Decision and Order is effective for purposes of appeal on June 27, 2019.<sup>44</sup>

Signed and Sealed: June 27, 2019

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>43</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

<sup>44</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.