

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Craig A. Dixon,
Appellant,

v.

Hall County Board of Equalization,
Appellee.

Case No: 16A 0214

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

Background

1. The Subject Property is a 79.89 acre agricultural parcel located in Hall County, Nebraska. The legal description of the Subject Property is found in the Case File.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$377,003 for tax year 2016.
3. The Taxpayer protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$280,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$377,003 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 23, 2017, at the Holiday Inn Express, 508 2nd Avenue South, Kearney, Nebraska, before Commissioner Robert W. Hotz.
7. Craig A. Dixon was present at the hearing.
8. Jack Zitterkopf, Hall County Attorney, and Jan Pelland, Hall County Assessor, were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²
11. 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

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

² 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).

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

12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. The Subject Property was assessed using a sales comparison approach, which assessed each acre of the parcel based upon sales prices of similar land sold in Hall County. The property record card for the Subject Property assessed 75.26 acres of the parcel’s 79.89 acres as irrigated acres.⁹
2. Craig Dixson asserted that the parcel was overassessed.
3. In 2015, the Natural Resources Conservation Service (NRCS) made a “preliminary technical determination” (hereinafter referred to as “Determination”) on the Subject Property that certified that 76.15 acres were “highly erodible,” including 56 acres that were “Non-Wetland” and 20.2 acres that were “Wetland.”¹⁰ According to the Determination, Non-Wetland ground is unrestricted, and Wetland ground “may be farmed under natural conditions without removal of woody vegetation.”
4. Dixson asserted that the NRCS Determination was not considered in the valuation of the parcel for tax year 2016 by the County Assessor.

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) (2016 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 Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

⁹ See, Case File. Irrigated Cropland includes “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.” 350 NAC Ch. 14, Section 002.21B.

¹⁰ See, Case File.

5. Mr. Dixon also asserted that a Conservation Reserve Program (CRP)¹¹ contract relating to the parcel expired December 31, 2015. He stated that the parcel was in grass during the entire 2015 growing season, and that he conducted a controlled “burn” of the parcel and seeded to re-establish grass in 2016. He stated that he made a Wetland Restoration application to the NRCS in 2017.
6. Mr. Dixon stated that the parcel had no pond and one wellhead that was associated with water rights.
7. Irrigated Cropland includes “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”¹²
8. Irrigable Lands are “lands having soil, topographic, drainage, and climatic conditions favorable for irrigation and located in a position where a water supply is or can be made available.”¹³
9. Sub-classifications [of agricultural land and horticultural land] may be recognized “in order to achieve proportionate market value. Examples of [such] sub-classifications include, but are not limited to: ... Irrigable land ... [which] may be considered a sub-classification. The value of the land should reflect the current market value recognized for other similarly situated land that has the potential to be irrigated but is not currently irrigated.”¹⁴
10. Jan Pelland stated that there had not been enough sales of irrigable land during the relevant time period to establish a market for irrigated grassland.
11. The Taxpayer has not provided sufficient evidence to prove that the irrigated designations in the assessment were incorrect. Under the NRCS Determination, even the 20.2 acres could be “farmed under natural conditions.” Further, the Taxpayer did not assert that the parcel was not irrigated during the relevant time period, only that the parcel was in grass during 2015. Irrigated cropland includes grasses.¹⁵
12. 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.
13. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

¹¹ CRP programs are generally administered by the United States Department of Agriculture, Farm Services Agency.

¹² 350 NAC Ch. 14, Section 002.21B.

¹³ 350 NAC Ch. 14, Section 002.38.

¹⁴ 350 NAC Ch. 14, Sections 006.04C.

¹⁵ 350 NAC Ch. 14, Section 002.21B.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is \$377,003.
3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on August 14, 2017.

Signed and Sealed: August 14, 2017

Robert W. Hotz, Commissioner