

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

Mark J. Blazek,  
Appellant,

v.

Richardson County Board of Equalization,  
Appellee.

Case Nos: 18A 0136 & 18A 0137

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

**Background**

1. The Subject Property consists of two separate agricultural parcels located in rural Richardson County, Nebraska. In Case No. 18A 0136, the parcel is 40 acres, and in Case No. 18A 0137, the parcel is 80 acres. The legal descriptions of the parcels are found in the case files.
2. For tax year 2018, the Richardson County Assessor (the County Assessor) assessed the Subject Property in Case No. 18A 0136 at \$134,879 and assessed the Subject Property in Case No. 18A 0137 at \$258,635.
3. The Taxpayer protested these values to the Richardson County Board of Equalization (the County Board) and requested assessed values of \$101,200 for the property in Case No. 18A 0136 and \$202,400 in Case No. 18A 0137.
4. The County Board determined that the taxable value of the Subject Property was \$134,879 for the property in Case No. 18A 0136 and \$258,635 for the property in Case No. 18A 0137.
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 July 10, 2019, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Mark J. Blazek was present at the hearing.
8. Pamela Vice, Richardson County Assessor, was 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.<sup>1</sup>

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

10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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 sufficient competent evidence to justify its action.”<sup>3</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>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### **Findings of Fact & Conclusions of Law**

16. The Taxpayer purchased the Subject Property on February 22, 2018, for \$440,000, including both properties in Case Nos. 18A 0136 and 18A 0137.
17. The Taxpayer’s main contention in these appeals is that the price paid in the purchase of the Subject Property in February 2018 should determine the actual value of the Subject Property as of the effective date of January 1, 2018. The Taxpayer provided copies of three Nebraska Supreme Court cases to support his contention.<sup>9</sup>

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<sup>2</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>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</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. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> *Potts v. Bd. of Equal.*, 213 Neb. 37, 328 N.W.2d 175 (1982), *U.S. Ecology, Inc. v. Bd. of Equal.* 256 Neb. 7, 588 N.W.2d 575 (1999), and *Firethorn Inv. v. Bd. of Equal.*, 261 Neb. 231, 622 N.W.2d 605 (2001).

18. Nebraska law requires that the assessment of agricultural land and horticultural land be based upon 75% of the actual value of the land.<sup>10</sup>
19. Actual value, market value, and fair market value have the same meaning.<sup>11</sup>
20. If the 2018 purchase price of the Subject Property were used as the sole indicator of the value of the Subject Property, and the agricultural discount of 75% were applied to the combined purchase price of \$440,000, the taxable value of the Subject Property at the resulting \$330,000 would be substantially less than the combined assessed values of \$393,514.<sup>12</sup>
21. In *Potts v. Hamilton County Board of Equalization*, the Court gave “strong consideration” to an arm’s length sale of a property as evidence of the actual value of the same property.<sup>13</sup>
22. In *Firethorn Investment v. Lancaster County Board of Equalization*, the Court held that a single sale “may in some instances provide evidence of market value.”<sup>14</sup> However, *Firethorn* involved the value of “four tracts of land which compose a private golf course,” subject to preservation easements which “provided that the property be devoted to only open space and golf course uses for a period of 100 years.”<sup>15</sup> *Firethorn* is not factually similar to the Taxpayer’s appeal.
23. In *U.S. Ecology, Inc. v. Boyd County Board of Equalization*, the Court found that “[t]he purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in determining actual value.”<sup>16</sup>
24. All agricultural land and horticultural land in the same market area of the Subject Property was analyzed on the basis of soil types based upon the most recent soil survey.<sup>17</sup> Each soil type was then assigned to a Land Capability Group (LCG). Soil types that had similar capabilities and characteristics were placed in the same LCG.<sup>18</sup>
25. The 2018 Reports and Opinions of the Property Tax Administrator for Richardson County (R&O) contains average acre value comparisons for each of the LCGs for Richardson County.<sup>19</sup>
26. Property record cards for eight parcels of agricultural land and horticultural land were provided and reviewed. For each parcel, the value per acre for each LCG was consistent with the average acre values in the R&O.

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<sup>10</sup> Agricultural land and horticultural land constitutes a separate and distinct class of property for purposes of property taxation, and shall be subject to taxation and valued at seventy-five percent of its actual value. Neb. Rev. Stat. § 77-201(2).

<sup>11</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>12</sup> Purchase price \$440,000 x 75% = \$330,000. Combined assessed values of \$134,879 + \$258,635 = \$393,514.

<sup>13</sup> *Potts*, 213 Neb. at 47-48, 328 N.W.2d at 181.

<sup>14</sup> *Firethorn*, 261 Neb. at 241, 622 N.W.2d at 612.

<sup>15</sup> *Firethorn*, 261 Neb. at 231, 622 N.W.2d at 607.

<sup>16</sup> *U.S. Ecology*, 256 Neb. at 18, 588 N.W.2d at 583.

<sup>17</sup> See, Title 350 NAC, Chapter 14, Section 004.08.

<sup>18</sup> “A few of the other soil characteristics that help to determine land capability and subsequently the land capability group are texture, attributes, saline or alkali conditions, water tables, flooding hazards and depth of soil over bedrock or gravel. All of these characteristics affect the capability of a soil.” Title 350 NAC, Chapter 14, Section 004.08C.

<sup>19</sup> See 2018 Reports and Opinions of the Property Tax Administrator, Richardson County, Exhibit 74, page 27.

27. No information was provided that would indicate that the LCGs of the Subject Property were not assessed consistently with the other parcels of agricultural land and horticultural land parcels within the same market area of Richardson County.
28. “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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach. Section 77-112 requires use of applicable statutory factors, individually or in combination, to determine the actual value of real estate for tax purposes. Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”<sup>20</sup>
29. The fact that 75% of the price paid in the single sale of the Subject Property indicated a value \$63,514 lower than the assessment is not dispositive. The average acre values shown in the R&O, which were determined based on all qualified sales in the market area of the Subject Property, are a reasonable indicator of 75% of the Subject Property’s market value in the ordinary course of trade.
30. When considering all of the information provided and weighing all of the factors that are relevant to the determination of the actual value of the Subject Property, the Commission finds that the assessed value of the Subject Property was equalized with the other parcels of agricultural land and horticultural land in the same market area in Richardson County.
31. 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.
32. 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 is as follows:

18A 0136: \$134,879

18A 0137: \$258,635

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<sup>20</sup> *Cabela’s, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 631-632 (1999) (internal citations omitted).

3. This Decision and Order, if no further action is taken, shall be certified to the Richardson County Treasurer and the Richardson 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 year 2018.
7. This Decision and Order is effective on October 15, 2020.

Signed and Sealed: October 15, 2020

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Robert W. Hotz, Commissioner