

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

Kristi Wold,  
Appellant,

v.

Hall County Board of Equalization,  
Dan Cimino,  
Appellees.

Case No: 19A 0036

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is an agricultural parcel, with a legal description of: Alda TWP PT NW1/4 NE1/4 20-10-10 34.77 AC.
2. The Hall County Assessor assessed the Subject Property at \$199,136 for tax year 2019.
3. Dan Cimino (the Taxpayer) protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$155,297 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$155,297 for tax year 2019.
5. The Assessor appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on December 10, 2021, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, before Commissioner James D. Kuhn.
7. Kristi Wold (the Assessor) was present at the hearing.
8. Pierce D. Fiala (Legal Counsel) was present for the County Board.
9. Dan Cimino (the Taxpayer) was present at the hearing.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
12. 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

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

<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).

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>

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

#### Findings of Fact & Conclusions of Law

17. The Assessor has one agricultural market area for Hall County and her values are based on sales of agricultural land in Hall County. The Assessor stated that the County Board’s decision to lower the assessed value of the Taxpayer’s property has caused dis-equalization with other agricultural parcels in the county.
18. Legal Counsel for the County Board stated that the Board lowered the value of the Subject Property and was justified to lower the value because mass appraisal is just one method of valuation. The County Board did not provide any evidence to support their valuation or reason for lowering the value.
19. The Taxpayer owns an adjoining parcel and stated he purchased the Subject Property because of its location. The Taxpayer stated there was flooding on the Subject Property in 2019. The Taxpayer stated that although the Subject Property has some of the same soil classifications as other properties, the soil is different in other areas of the county even though they are of the same classification. The Taxpayer purchased the Subject Property in 2016 for \$206,972. The Taxpayer did not provide any evidence the Assessor was valuing the Subject Property unfairly or differently than other similar properties in Hall County.

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<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).

20. The purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.<sup>9</sup>
21. The County Board did not lower the assessments of all agricultural properties that were purchased in 2016 to their purchase price and only gave relief to taxpayers who protested their valuation. The result is that the Taxpayer's property is assessed much lower than other properties in Hall County with the same soil types and production capacity. The actions of the County Board have caused dis-equalization in Hall County among agricultural parcels.
22. The Assessor is using accepted mass appraisal techniques to value all agricultural parcels in Hall County fairly and equally. The assessment/sales ratio for agricultural land in Hall County for 2019, based on 62 arm's-length sales, was 74 percent of actual value, which is within the range required by law.<sup>10</sup>
23. The Assessor has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. The Taxpayer has 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 vacated.

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 2019 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$199,136
<u>Improvements</u>	<u>\$ 0</u>
Total	\$199,136

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 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

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<sup>9</sup> *Forney v. Box Butte County Bd. of Equal.*, 7 Neb.App. 417, 424, 5852 N.W.2d 631, 637 (1998). Note that agricultural and horticultural land in Nebraska is not assessed at actual value, but at 75% of actual value. Neb. Rev. Stat. § 77-201.

<sup>10</sup> See 2019 Reports and Opinions of the Property Tax Administrator, Hall County, at 15-17, Neb. Rev. Stat. § 77-5023(2).

5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2019.
7. This Decision and Order is effective on March 4, 2022.

Signed and Sealed: March 4, 2022

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James D. Kuhn, Commissioner