

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kristi Wold,
Appellant,

v.

Hall County Board of Equalization,
Jared Leiser, and
Sandra K Leiser,
Appellees.

Case Nos: 19A 0038, 19A 0039
& 19A 0040

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Properties are vacant agricultural land, with legal descriptions of: (19A 0038) Prairie Creek TWP SW1/4 15-12-10 159.36 AC, (19A 0039) Lake TWP PT S1/2 NE1/4 23-12-9 75.45 AC, (19A 0040) Prairie Creek TWP E1/2 SW1/4 16-12-10 81.17C.

2. The Hall County Assessor assessed the Subject Properties at

19A 0038	19A 0039	19A 0040
\$617,175	\$312,522	\$189,276

for tax year 2019.

3. The Taxpayer protested these values to the Hall County Board of Equalization (the County Board) and requested an assessed value of

19A 0038	19A 0039	19A 0040
\$382,129	\$236,447	\$113,069

for tax year 2019.

4. The County Board determined that the taxable value of the Subject Properties was

19A 0038	19A 0039	19A 0040
\$437,362	\$242,924	\$113,069

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. Jared Leiser (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 1.¹
11. The Commission's review of a determination of the County Board of Equalization is de novo.²
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 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
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.⁵
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. 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 properties has caused dis-equalization with other agricultural parcels in the county.
2. 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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² 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).

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

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

method of valuation. The County Board did not provide any evidence to support their valuation or reason for lowering the value.

3. The Taxpayer feels as though Hall County should have more than one market area for agricultural land. The Taxpayer stated the northern part of Hall County is different than the southern part and the Assessor could possibly use Prairie Creek as a dividing line, as he has seen sales of land north of the creek bringing less value than sales south of the creek.
4. The Taxpayer provided property record files (PRF) of properties north of Prairie Creek that sold in 2016 and 2017; a 2018 sale described by the Taxpayer was not listed on the PRF. Most of these sales would have been part of the Assessor's sales file and would have gone into the analysis for setting agricultural land values for the 2019 assessment.
5. The Taxpayer provided an appraisal for 19A 0039 that was done by Farm Credit Services of America dated November 11, 2016. Although an appraisal can be good evidence of value, an appraisal from 2016 would have little to no bearing on the 2019 valuation of the Subject Property. The Taxpayer purchased two of the Subject Properties (19A 0038 & 19A 0040) in 2016 and felt as though the purchase price would be a better reflection of value for the 2019 tax year.
6. 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.⁹
7. 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.
8. 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.¹⁰
9. 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.
10. The Assessor 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.

⁹ *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.

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

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2019 is vacated and reversed.
2. The taxable value of the Subject Properties for tax year 2019 is:

19A 0038	19A 0039	19A 0040
\$617,175	\$312,522	\$189,276

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.
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

James D. Kuhn, Commissioner