

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

Henry Duane Sader, III  
Appellant,

v.

Hall County Board of Equalization  
Appellee

Case No: 10A-275

Decision Affirming the Hall  
County Board of Equalization

**For the Appellant:**  
Henry Duane Sader, III,

**For the Appellee:**  
Jack Zitterkopf  
Deputy Hall County Attorney

Heard before Commissioners Hotz and Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a parcel of agricultural land and horticultural land located in Hall County, Nebraska. The parcel contains 115.88 acres, including 63.34 accretion acres. (E2:11). The parcel had no improvements. The legal description of the parcel is found at E2:9.

**II. PROCEDURAL HISTORY**

The Hall County Assessor determined that the assessed value of the subject property was \$49,056 for tax year 2010. Henry Duane Sader, III, (Taxpayer) protested this assessment to the Hall County Board of Equalization (County Board) and requested an assessed valuation of \$33,566. The County Board determined that the assessed value for tax year 2010 was \$49,056. (E1).

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The parties exchanged two exhibits prior to the appeal hearing. The Commission held the hearing on June 11, 2011.

**III. STANDARD OF REVIEW**

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.” *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

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.

*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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. 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) . 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

## IV. VALUATION

### A. Law

Under Nebraska law,

[a]ctual 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.

Neb. Rev. Stat. §77-112 (Reissue 2009). "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."

Neb. Rev. Stat. §77-112 (Reissue 2009). The Courts have held that "[a]ctual value, market value, and fair market value mean exactly the same thing." *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.

Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). A parcel of land means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.

See, Neb. Rev. Stat. §77-132(Reissue 2009).

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.

Neb. Rev. Stat. §77-1359 (2) (Reissue 2009). “Accretion Land is the increase of land by the gradual deposit of water borne solid materials. Accretion land areas may vary in size as the associated body of water either raises or lowers, or as a stream or river changes its channel. It is the opposite of erosion.” 350 Neb. Admin. Code, ch 14, §002.02 (3/09). “The state of Nebraska is unique in its recognition of the riparian rights of individuals to own land lying under water. Accretion land can be classified into any agricultural use category.” 350 Neb. Admin. Code, ch 14, §004.05 (3/09).

## **B. Summary of the Evidence**

The Property Record File for the subject property was received in evidence. E2:9-11. The Taxpayer testified but provided no exhibits prior to the hearing.

The Taxpayer asserted valuation increases in each of the three most recent tax years were too high. E2:2, 9. The prior year’s assessment is not relevant to the subsequent year’s valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Taxpayer testified that he had put the land into a Wildlife Habitat Incentives Program (WHIP) in 2002, and that under the program and prior to 2010 dead timber was removed. He testified that his agreement under the WHIP was effective until 2012, and that he received \$400 to \$500 per month under the agreement. Despite the removal of the dead timber, he asserted, without evidence, that none of the 115.88 acres should have been assessed as grass land.

The Taxpayer also testified that he did some hunting on the land, and that a neighbor hunted the land in exchange for “keeping watch” over it. However, the County Board did not assert that the parcel was being used for recreational purposes.

The parcel was assessed based upon land use. E2:11. Of the 115.88 total acres, 30.25 acres were valued as grassland, 8.86 acres were valued as useable accretion land, 22.29 acres were

valued as waste land, and 54.48 acres were valued as waste accretion. E2:11, 13. The County Assessor testified regarding the methods used to value the land. After preliminary statistics for tax year 2010 indicated that agricultural land and horticultural land in Hall County was under-assessed, and after a new soil survey had been implemented, all agricultural and horticultural land in Hall County was revalued for 2010. Most notably, according to the Assessor, the per acre values of useable accretion land and waste accretion land were increased significantly as compared to 2009. The Assessor testified that she valued the subject property and all comparable parcels per a 2010 Agricultural Land Value Schedule, Market Area 2. E2:12. There was no clear and convincing evidence that the determination by the County Board was arbitrary or unreasonable.

## V. CONCLUSION

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that the Taxpayer has not provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

## VI. ORDER

IT IS ORDERED THAT:

1. The Decision of the Hall County Board of Equalization determining the value of the subject property for tax year 2010 is Affirmed.
2. That the Assessed value of the Subject property for tax year 2010 is:

<u>Land:</u>	<u>\$49,056</u>
Total:	\$49,056
3. This decision and order, if no appeal is timely filed, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2010.
7. This order is effective for purposes of appeal on October 19, 2011.

Signed and Sealed: October 19, 2011

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2010 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.