

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

Maynard L. Gall,  
Appellant,

v.

Harlan County Board of Equalization,  
Appellee.

Case No: 14A 021

Decision and Order Affirming the  
Determination of the Harlan  
County Board of Equalization

1. A Single Commissioner hearing was held on August 4, 2015, at the Wingate Inn, 108 3rd Avenue, Kearney, Nebraska, before Commissioner Nancy J. Salmon.
2. Maynard L. Gall (the Taxpayer) was present at the hearing.
3. Bryan McQuay, Harland County Attorney, was present for the Harlan County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an agricultural parcel, with a legal description of: S1/2 36-2-17, Harlan County, Nebraska.

Background

5. The Harlan County Assessor (the Assessor) assessed the Subject Property at \$864,880 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$578,156 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$864,880 for tax year 2014.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>1</sup> “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.”<sup>2</sup>
10. 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> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>2</sup> *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>

11. 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>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
13. 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>
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
15. The Taxpayer asserted that most of the Subject Property was either enrolled in the Conservation Reserve Enhancement Program (CREP) or the Conservation Reserve Program (CRP). The Taxpayer provided the contract payments from CREP and CRP. He also obtains some income associated with the leasing of portions of the Subject Property for pasture. He asserted that approximately 106 acres of the Subject Property are not enrolled in either the CREP or CRP and instead are grassland that he leases.
16. The Property Record Card provided by the Assessor shows 24 acres classified as Dry. The Taxpayer asserted that these acres are currently enrolled in CRP and are grassland. The Property record also shows spot symbols for 172 acres. The assessor explained that these are the CREP acres. She did not know that any portion of the Subject Property was also enrolled in CRP.
17. The Taxpayer’s main assertion was the 107 acres of CREP classified by the Assessor as 1A or spot symbol (1A-CF) were irrigated with surface water prior to being placed in the CREP.<sup>9</sup> He asserted that the actual value of agricultural land and horticultural land irrigated with surface water is less than the actual value of agricultural land and horticultural land irrigated from ground water. He asserted that irrigation wells do not have the same restrictions on use as surface water irrigation and that the irrigation wells are not subject to the same risks as surface water irrigation; i.e., ponds used for surface

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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) (Citations omitted).

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<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. 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>9</sup> The Commission notes that the Taxpayer has also improved the parcel with terraces to aid in water conservation.

water irrigation may go dry depending upon the elements whereas ground water is protected from some of the elements and less dependent upon the weather and climate in a given year.

18. The County Assessor noted that there were restrictions on water in the entire county from every source, and disagreed that the assessed values should be different. She stated that she keeps track of CREP acres with the spot symbol, but that the valuation is the same as all irrigated land in the county.
19. The Commission was provided a sale of CREP. The grantee bought out the CREP contract. It is unknown how many acres of the sold parcel were in CREP.
20. The Assessor stated that she did not track CRP acres in the County, and no sales of CRP acres were made available to the Commission.
21. The Department of Revenue has promulgated rules and regulations regarding the assessment of agricultural and horticultural land enrolled in CREP and CRP.<sup>10</sup> “Agency regulations that are properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law.”<sup>11</sup> The rules and regulations requires the County Assessor to classify agricultural and horticultural land enrolled in CREP and CRP according to its “current use such as grassland or timbered grassland[.]”<sup>12</sup> In other words, even though some acres enrolled in CREP and CRP may be used for irrigated or dry land purposes after the conclusion of the enrollment period, acres enrolled in CREP or CRP are required to be classified according to their current use. The testimony from the Taxpayer indicates that the acres enrolled in CREP and CRP located on the Subject Property are currently grassland, and according to law should be classified as such.
22. Concerning the process for determining the assessed value of agricultural and horticultural land enrolled in CREP or CRP, the Department of Revenue’s rules and regulations provide further guidance: “[T]he values for land enrolled in government program acres should be adjusted to reflect the local market for similar property.”<sup>13</sup> In other words, the actual value of CREP land should be determined not by the market for grassland or traditional irrigated cropland, but by the market for CREP land and the actual value of CRP land should be determined not by the market for grassland or traditional irrigated cropland, but by the market for CRP land. Thus, while the Subject Property should be classified as grassland it does not necessarily follow that the Subject Property should be valued the same as all non-CREP/CRP grassland or irrigated land in the County. Instead market information from other CREP land must be examined in order to determine the actual value of the CREP acres using a professionally accepted

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<sup>10</sup> See, 350 Neb. Admin. Code, ch. 14 §004.04E (03/15/2009).

<sup>11</sup> *Valpak of Omaha v. Nebraska Dept. of Rev.*, 290 Neb. 497, 503, \_\_\_ N.W.2d \_\_\_ (2015); *Smalley v. Nebraska Department of Health and Human Services*, 283 Neb. 544, 557, 811 N.W.2d 246, 256 (2012) (Citations Omitted).

<sup>12</sup> 350 Neb. Admin. Code, ch 14 §004.04E (03/15/2009).

<sup>13</sup> *Id.*

mass appraisal method.<sup>14</sup> Similarly, market information from other CRP land must be examined in order to determine the actual value of the CRP acres using a professionally accepted mass appraisal method

23. Neither party provided sufficient evidence to determine the actual value of CREP land or CRP land in the County using professionally accepted methods. While some testimony adduced concerning the buyout of some acre from the CREP, the Commission is unable to determine based on the evidence how many acres the agreement included or the type of soil associated with those acres.
24. Without sufficient evidence of actual value of CREP land or CRP land in the County, the Commission is unable to determine the level of assessment for the Subject Property. Similarly, without additional evidence of the actual value of CREP land or CRP land the Commission finds that there is not clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
25. The Commission also finds that there is insufficient evidence to determine the difference, if any, in the actual value of agricultural land and horticultural land irrigated from surface water as compared to agricultural land and horticultural land irrigated from ground water. While it is possible that the different source of water results in different valuations that difference would need to be established by market evidence. No such market evidence was provided to the Commission.
26. 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.
27. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the Harlan County Board of Equalization determining the taxable value of the Subject Property for tax year 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$864,880.
3. This Decision and Order, if no further action is taken, shall be certified to the Harlan County Treasurer and the Harlan County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
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>14</sup> See, *Id.* (indicating that CREP land should be valued using similar properties); See also, Neb. Rev. Stat. §77-112 (Reissue 2009) (indicating the acceptable methods for determining the actual value of real property for assessment purposes).

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2014.
7. This Decision and Order is effective on August 14, 2015.

Signed and Sealed: August 14, 2015

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Nancy J. Salmon, Commissioner