

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

John D. Burkholder Sr.,  
Appellant,

v.

Harlan County Board of Equalization,  
Appellee.

Case No: 16A 0144

Decision and Order Reversing  
County Board of Equalization

**Background**

1. The Subject Property is an agricultural parcel, with a legal description of: SW ¼ 29-4-17, Harlan County, Nebraska.
2. The Harlan County Assessor (the County Assessor) assessed the Subject Property at \$752,625 for tax year 2016.
3. The Taxpayer protested this value to the Harlan County Board of Equalization (the County Board) and requested a reduction due to his allegation that a portion of his land had not been properly classified by the County Assessor.
4. The County Board determined that the taxable value of the Subject Property was \$752,631 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 26, 2017, at the Younes Conference Center, 416 W. Talmadge St., Kearney, Nebraska, before Commissioner Nancy J. Salmon.
7. John D. Burkholder Sr. was present at the hearing on behalf of himself, as the Taxpayer.
8. Bryan McQuay, Harlan County Attorney, 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>
10. The Commission’s review of the 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

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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>

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’s principal concern appears to be the County Assessor’s decision to value 5.94 acres located on the Subject Property as grassland. The Taxpayer’s position is that such acres should be valued as waste land or included in the Subject Property’s farm site.
17. According to the submitted documentation, the grassland consisting of 5.94 acres is located on the Subject Property in three separate areas. The portion in the southwest corner of the Subject Property contains approximately 3.64 acres. The area is not fenced and does not have a source of water for grazing livestock. The area is comprised generally of trees and wild grass, and it does not provide any type of income to the Taxpayer. It does adjoin the Subject Property’s farm site. It appears that the Taxpayer utilizes a portion of the area for the storage of machinery and miscellaneous items. The Taxpayer asserts that the area has never been utilized for income-producing purposes. Neb. Rev. Stat. § 77-1359 (4) defines a “farm site” as that portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature. Because the area in question abuts the Subject Property’s farm site as well as that portion of the Subject Property actively devoted to agricultural use, the

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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(9) (2016 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) (2016 Cum. Supp.).

Commission finds that it should be classified as part of the farm site. As such it is valued at \$500 per acre.

The second area noted by the Taxpayer is a 1.18 acre area bordering a road ditch on the southern portion of the Subject Property. The Taxpayer indicates that crops are planted each year to the ditch area. The Commission finds that due to the circumstances, this area constitutes waste land and would be valued at \$100 per acre as described in the 2016 Reports and Opinions of the Property Tax Administrator for Harlan County.

The final area noted by the Taxpayer is a 1.14 acre area located in the northeast corner of the Subject Property. The Commission finds that the Taxpayer did not submit adequate information supporting a change in this area's classification.

18. In his Form 422 Protest Form, the Taxpayer also appeared to question the County Assessor's valuation of one or more grain bins located on the Subject Property. However, no evidence was submitted by the Taxpayer regarding this issue. The Commission finds that no change should be made to the valuation of the Subject Property's grain bins.
19. The Taxpayer 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.
20. 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 2016, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$740,196
<u>Improvements</u>	<u>\$ 8,535</u>
Total	\$748,731

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 (2016 Cum. Supp.).
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 2016.
7. This Decision and Order is effective on July 7, 2017.

Signed and Sealed: July 7, 2017

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Nancy J Salmon, Commissioner