

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

Michael S. Bauer,  
Appellant,

v.

Hitchcock County Board of Equalization,  
Appellee.

Case No: 16A 0247

Decision and Order Reversing Hitchcock  
County Board of Equalization

**Background**

1. The Subject Property is an unimproved agricultural parcel, with a legal description of: Pt. SE 1/4 29-4-32 cont. 164.78 ac.
2. The Hitchcock County Assessor (the County Assessor) assessed the Subject Property at \$176,040 for tax year 2016.
3. The Taxpayer protested this value to the Hitchcock County Board of Equalization (the County Board) and requested an assessed value of \$157,235 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$176,040 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 1, 2017 at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J Salmon.
7. Ronald B. and Victoria L. Bauer were present at the hearing on behalf of the Taxpayer.
8. D. Eugene Garner, Hitchcock 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 sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until

<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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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 issue in this appeal involves the valuation of land owned by the Taxpayer which is under Conservation Reserve Enhancement Program (CREP) contracts between the owner of the land and the United States Department of Agriculture (USDA). The evidence indicates that when a landowner enters into a CREP contract, he or she is required to plant certain grasses, is prohibited from harvesting or grazing on the grasses, and may not irrigate the land subject to the contract. Under the contracts, landowners are paid monthly. The contracts are typically for a ten or fifteen year period. In this appeal, the evidence indicates that 49.50 acres of the Subject Property was subject to a CREP contract.
17. The Commission has determined that CREP contracts require separate market analysis. Land should be classified at its current use such as grassland; however, the values for land enrolled in the program acres should be adjusted to reflect the local market for similar property.<sup>9</sup>
18. Duane Dinnel, a farm property manager, provided evidence to the Commission regarding sales of agricultural parcels in Hitchcock County. These parcels were sold between 2012 and 2015, and Dinnel indicated the parcels were similar to the Subject Property. The Commission has reviewed the comparable sales information provided as well as the

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<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.).

<sup>9</sup> Title 350, NAC Ch. 14 §004. 04E

information provided by the County. The estimated sales prices of the CREP acres of the five comparable parcels were \$2,260, \$2,493, \$2,618, 2,575, and \$3,413. The median of these sales prices per acre is \$2,575. Since the County Assessor assessed all CREP acres at 72% of market value as required by the Commission, it is necessary to multiply \$2,575 by .72 to determine the taxable value of the CREP acres. The result of that multiplication is that the taxable value of the CREP acres is \$1,854. Therefore, based upon the estimated sales prices of the CREP acres of the five comparable properties during the relevant time period, the Commission finds the taxable value of the CREP acres of the Subject Property is \$1,854 per acre.

19. The Subject Property consisted of 164.7 acres, of which 49.50 acres were subject to the terms of the CREP contract. The Property Record Card provided by the County did not include the CREP adjustment required by the Commission’s Findings and Orders Adjusting Value entered on May 5, 2016. However, the Property Record Card did make the required grassland adjustment. In any event, the Commission adjusts the CREP value as reflected in paragraph 18 above. Based upon the Property Record Card for tax year 2016, and the findings above, the Commission finds that the taxable value of the Subject Property for tax year 2016 is as follows:

Dryland	\$ 17,880
Grassland	\$ 53,440
River	\$ 475
CREP land	<u>\$ 91,773</u>
<b>Total</b>	<b>\$163,568</b>

20. 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.

21. 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	\$163,568
Total	\$163,568

3. This Decision and Order, if no further action is taken, shall be certified to the Hitchcock County Treasurer and the Hitchcock 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 June 12, 2017.

Signed and Sealed: June 12, 2017

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Nancy J Salmon, Commissioner