

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

James F. Maloney,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 18A 0056

Decision and Order Reversing the  
Determination of the Hall County Board of  
Equalization

**For the Appellant:**  
James F. Maloney,  
*Pro se*

**For the Appellee:**  
Sarah Carstensen,  
Deputy Hall County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 156.4 acre agricultural parcel located in Hall County, Nebraska, improved with a residence and other miscellaneous buildings. The legal description and property record card for the Subject Property are found at Exhibit 6.

**II. PROCEDURAL HISTORY**

The Hall County Assessor determined that the assessed value of the Subject Property was \$1,063,447 for tax year 2018. James F. Maloney (the Taxpayer) protested this assessment to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$983,234. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$1,021,059.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 20, 2019, with Commissioner Hotz presiding. The parties stipulated to the receipt of exchanged Exhibits 1 through 13. Exhibits 14 and 15 were marked and admitted in the course of the hearing.

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<sup>1</sup> Ex. 1.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board is de novo.<sup>2</sup> When the Commission considers an appeal of such a decision, 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 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>

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> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

The 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> 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.<sup>8</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

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<sup>2</sup> 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).

<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) (Reissue 2018).

<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. 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. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.<sup>9</sup> The Commission may also take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

Actual 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.<sup>12</sup>

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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>13</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>14</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>17</sup> Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>18</sup> Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for

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<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> *Omaha Country Club* at 180, 829.

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.<sup>19</sup>

## **B. Facts & Analysis**

Although the Subject Property includes a residence and other improvements, the Taxpayer is not challenging the County Board's conclusions as to the value of those improvements, which were determined by both the County Board and the County Assessor to be \$261,284.<sup>20</sup> Because this value is not in dispute, we conclude without further discussion that the value of the improvement component of the Subject Property is \$261,284.

The Subject Property is located in Market Area 1 of Hall County, which is the only market area for agricultural land and horticultural land within the county. In Nebraska, agricultural property is classified into land capability groups (LCGs) based on soil types.<sup>21</sup> These LCGs are assigned a per acre value based on sales in the market area, which is typically applied uniformly to all acres of that same LCG throughout the market area.<sup>22</sup> The documentary evidence established that, aside from roads, farm site, and farm home site, the Subject Property is composed entirely of soil types falling into the 2A1, 2A, and 4A LCGs.<sup>23</sup> When the County Assessor performed her initial assessment of the Subject Property, each acre of the Subject Property with an LCG of 2A1 or 2A was valued at \$5,740; each acre with an LCG of 4A was valued at \$4,335; and the total assessed value of the land was \$802,163.<sup>24</sup>

The Taxpayer testified that agricultural land in the market area of the Subject Property had been declining in value, but that the assessment increased by \$40,000 from tax year 2017 to tax

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<sup>19</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>20</sup> Ex. 1.

<sup>21</sup> See Neb. Admin. Code, Ch. 14 § 004. "LCG," land capability group, and "LVG," land valuation group, refer to the same groupings and are used interchangeably in current mass appraisal practice in Nebraska. In this Order, the Commission will use "LCG" because that is the term used in the rules and regulations of the Department of Revenue. An LCG is "a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management." Neb. Admin. Code, Ch. 14 § 004.08E

<sup>22</sup> See Neb. Admin Code Ch. 14, testimony of Wold.

<sup>23</sup> Ex. 6:2. The 2A LCG includes irrigated soils that have the capability to produce moderately high to above average yields of either grain or forage crops, including native and introduced grasses, and food and crops produced for processing. The 2A1 designation is a further refinement indicating a high production capability within the 2A category. The 4A LCG includes soils that have the capability to produce low or very low yields of the same crops. See 350 Neb. Admin. Code Ch. 14 § 004.

<sup>24</sup> Ex. 6:24, Ex.1. According to the testimony of the County Assessor, Ex. 6:24 reflects the assessor's original valuation methodology for tax year 2018 despite being labeled Roll Year 2017. The total land value was lowered by the County Board following the Taxpayer's protest. In order to match the total determined by the County Board, the County Assessor adjusted the value of 43.86 of the Subject Property's 2A acres down to \$4,773.55 per acre. See Ex. 6:2.

year 2018. The annual Reports and Opinions of the Property Tax Administrator support the Taxpayer's assertion; according to the Reports, the average value per acre for 2A1 declined from \$6,217 in 2017 to \$5,740 in 2018; the average value per acre for 2A declined from \$6,197 to \$5,737; and the average value per acre for 4A declined from \$4,703 to \$4,323.<sup>25</sup>

The County Assessor, Kristi Wold, testified to the increase in the Subject Property's valuation despite overall declining agricultural land values. Wold has served as County Assessor since December 2017 and holds the State Assessor's Certificate; she has worked in the field of property assessment since 2007. She explained that, some time prior to 2004, a previous assessor had applied what were known as "spot codes" to a majority of acres on the Subject Property.<sup>26</sup> These spot codes typically reduced the value of a specific LCG to reflect a lower value. For example, the Subject Property includes 12.14 acres with an LCG of 2A1. Exhibit 6, page 23, shows that these acres were assessed with a "spot LVG" of 3A1 and a value of \$5,125 per acre in roll year 2016, when otherwise the average value of 2A1 for 2016 was \$6,413 per acre.<sup>27</sup>

Wold testified that, upon beginning service as County Assessor, she reviewed all of the spot codes applied to agricultural land throughout the county. When the spot codes were justified due to known conditions she left the codes in place, but where she could not determine the reason for the spot code, she removed it and restored the correct LCG and per acre value for the soil type. The county's records for the Subject Property did not include any explanation for why the spot codes were originally applied, and there were no known reasons for the spot codes for the Subject Property, so Wold removed them. The 2018 assessment was the first time removal of the spot codes impacted the assessed value of the Subject Property. Thus, although the valuation of each LCG included in the Subject Property declined in Hall County for the 2018 tax year, the assessed value of the Subject Property increased because the property was assessed with the appropriate LCGs for the soil types.

The Taxpayer testified that 129.2 acres of the Subject Property was classified by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) as highly erodible

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<sup>25</sup> See *2017 Reports and Opinions of the Property Tax Administrator for Hall County 2017*, page 31 and *2018 Reports and Opinions of the Property Tax Administrator for Hall County*, page 36.

<sup>26</sup> Ex. 6:11 through 6:24 show how these spot codes were applied to the Subject Property for tax years 2004 through 2017.

<sup>27</sup> Ex. 6:23; *2016 Reports and Opinions of the Property Tax Administrator for Hall County*, page 29.

land (HEL).<sup>28</sup> This classification, which began in the late 1980s or early 1990s, effectively requires the Taxpayer to comply with a conservation plan by maintaining records of his irrigation practices, providing annual reports on irrigation to the NRCS, and engaging in other conservation practices such as the planting of cover crops when necessary.<sup>29</sup> According to the Taxpayer, the classification has a negative impact on the market value of the Subject Property, comparable to a salvage title on a vehicle. According to the testimony of Wold, the NRCS does not communicate information about what land is classified as HEL to the County Assessor's office, and Wold was not aware of the HEL classification when making the 2018 assessment for the Subject Property. Wold testified that she classified the soil types on the Subject Property based on a 2010 soil survey, which presumably would have taken the HEL status of the property into consideration. We find that, although the evidence adduced at the hearing suggests that the HEL classification could impact the value of the Subject Property, the Taxpayer has not proven that the classification has not been taken into consideration through the soil survey, nor has the Taxpayer provided sufficient evidence for the Commission to quantify the impact of the HEL classification on the market value of the Subject Property.

The Taxpayer raised two additional issues related to the value of the land. First, he asserted that certain acres are subject to flooding and had been covered by standing water twice within the past five years.<sup>30</sup> The Taxpayer testified that this condition was due in part to the county's selective maintenance of culverts near the Subject Property, which allowed water to run onto the property but not off of it. Second, the Taxpayer asserted that agricultural land located on a ridge or high ground was more productive than land located on low ground or the river bottom, and that the Subject Property is located on the river bottom. Both of these conditions could have an impact on the market value of the Subject Property, but, again, the Taxpayer did not offer evidence that would enable the Commission to quantify the impact of the conditions on market value. The remainder of the evidence demonstrates that the County Assessor assessed the property using the methodology prescribed by Nebraska law, and that all acres of the same LCG within the same market area were assessed at the same rate.

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<sup>28</sup> See Ex. 13:33-43. The record includes minor discrepancies as to the precise amount of land classified as HEL. See also 7 C.F.R. § 12.

<sup>29</sup> It appears that a farmer producing an agricultural commodity on HEL is ineligible for a variety of important federal programs available to other farmers such as federal crop insurance premium subsidies. 7 C.F.R. § 12.4. However, the farmer may be exempted from such ineligibility through compliance with a conservation plan (Ex. 13:33-34). 7 C.F.R. § 12.5(2).

<sup>30</sup> See Ex. 14.

In response to the Taxpayer's protest, the County Board reduced the valuation of the land component of the Subject Property from \$802,163 to \$759,775, which was the same as the 2017 valuation for the land. At the hearing, however, Wold testified that the correct value for 2018 was \$802,163. As noted in Wold's testimony, the \$759,775 was calculated for tax year 2017 using both the unexplained spot codes and a sales file which was current for 2017 but partially outdated by 2018. We find that the County Board's determination of the value of the land component of the Subject Property is unreasonable and arbitrary because it relies on the spot coding and the outdated sales survey; moreover, the County Board's reduction in taxable value for the Subject Property results in dis-equalization between the Subject Property and other properties in the market area with the same LCGs. We find that the taxable value of the land component of the Subject Property for 2019 is \$802,163.

## **V. CONCLUSION**

The Commission finds that there is 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 there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County board is vacated and reversed.

## **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 2018 is vacated and reversed.<sup>31</sup>
2. The assessed value of the Subject Property for tax year 2018 is \$1,063,447.
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 (Reissue 2018).

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<sup>31</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been presented to the County Board of Equalization at the protest proceeding.

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 2018.
7. This Decision and Order is effective for purposes of appeal on July 2, 2019.<sup>32</sup>

Signed and Sealed: July 2, 2019

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>32</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.