

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

Henry D. Sader III,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 14A 035

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

1. A Single Commissioner hearing was held on August 3, 2015, at the Hall County Courthouse, 121 S. Pine Street, Grand Island, Nebraska, before Commissioner Nancy J. Salmon.
2. Henry D. Sader III (the Taxpayer) was present at the hearing.
3. Jack Zitterkopf, Chief Deputy Hall County Attorney, was present for the Hall County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is rural parcel consisting of deeded and accretion acres, with a legal description of: MARTIN TWP PT LTS 3 & 4 ISL & LT 5 ISL XC .06 AC HWY S I-80 29-9-12, Hall County, Nebraska.

**Background**

5. The Hall County Assessor (the Assessor) assessed the Subject Property at \$68,870 for tax year 2014.
6. The Taxpayer protested this value to the Hall County Board and requested an assessed value of \$31,524 for tax year 2014.
7. The County Board determined that the taxable value of the Subject Property was \$68,870 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>

<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).

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 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 he has had no income off the property since he has owned it. He asserted that because it was not an income producing property that it should assessed as wasteland. He described the parcel as a mile long and not very wide with only one entrance on the west end. The entrance is fenced and gated with a lock.
16. The Taxpayer described the use of the property as primarily wild life habitat. He asserted that he used to hunt on the property but does not anymore, but that he allows neighbors to hunt deer on the Subject Property.
17. The Taxpayer asserted that the fence is in poor condition and could not contain livestock. He asserted that the parcel’s assessed value increased by 40% while other the assessed values in Hall County only increased by 5%.
18. The Assessor asserted that the assessed value of the Subject Property increased approximately 9% from 2012 to 2013 and did not increase from 2012 to 2013. She asserted that the increase from 2013 to 2014 was approximately 27.7%.
19. The Assessor stated that 30.25 ac are assessed as grassland. She also stated that there are two accretion values. 8.88 acres of the Subject Property are assessed at \$1,000 per accretion acre and can be used for recreation. 54.93 acres of accretion are assessed at the waste value of \$100 per acre.

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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.).

20. The term wasteland has a legal definition found in the Property Assessment Division's rules and regulations:

Wasteland includes land that cannot be used economically and are not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts, which are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification.<sup>9</sup>

21. The definition requires wasteland to be "lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes."<sup>10</sup>
22. Nebraska Statutes define the term agricultural or horticultural purposes as:

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.<sup>11</sup>

23. The Taxpayer testified that during the tenure of his ownership the Subject Property has never been used for income producing purposes. There is no indication that the Subject Property is subject to a conservation easement or enrolled in a governmental program

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<sup>9</sup> 350 Neb. Admin. Code, ch 14, §002.54 (0/15/09).

<sup>10</sup> *Id.*

<sup>11</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

where payment is received to remove the Subject Property from agricultural or horticultural production.

24. The Subject Property is not used for agricultural or horticultural purposes. There is no evidence that the Subject Property is used in common management or ownership with adjacent parcels on which are used for agricultural or horticultural purposes.
25. Portions of the Subject Property cannot be classified as wasteland because no portions of the Subject Property or adjacent properties sharing common ownership or management are used for agricultural or horticultural purposes.
26. Further, because no portion of the Subject Property is used for agricultural or horticultural purposes, the Subject Property is not agricultural land and horticultural land.
27. The Commission notes that 30.25 acres of the Subject Property are assessed as grassland. Grassland is a class of agricultural land and horticultural land.<sup>12</sup> Agricultural land and horticultural land are subject to different property tax obligations than other types of real property in Nebraska. Agricultural land and horticultural land are assessed at only 75% of actual value, while all other types of real property must be assessed at 100% of actual value.<sup>13</sup>
28. The Commission finds that the Subject Property should be assessed at 100% of its actual value. However, the Commission notes that there was insufficient evidence to derive the actual value of the Subject Property. Additionally, there is insufficient evidence to determine whether the actual value of the Subject Property would be greater or lesser than its assessed value for tax year 2014.
29. Actual value is defined by Nebraska Statute as:

[T]he 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>14</sup>

30. A determination of the actual value of the Subject Property requires a determination of its highest and best use. There is insufficient information to determine the Subject Property's highest and best use.
31. Concerning the Taxpayer's assertion that the Subject Property was overvalued because the assessed value of the Subject Property increased more than the average increase for Hall County as a whole, the Commission finds this argument to be irrelevant.

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<sup>12</sup> 350 Neb. Admin. Code, ch 14, §004.04 (0/15/09).

<sup>13</sup> See, Neb. Rev. Stat. §77-201 (Reissue 2009).

<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

32. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>15</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>16</sup>
33. 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.
34. 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 Hall 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 \$68,870.
3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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.
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 12, 2015.

Signed and Sealed: August 12, 2015

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Nancy J. Salmon, Commissioner

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<sup>15</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>16</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).