

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

Gerald D. Slezak,  
Appellant,

v.

Fillmore County Board of Equalization,  
Appellee.

Case No: 13A 052

Decision and Order Affirming Fillmore  
County Board of Equalization

1. A Single Commissioner hearing was held on December 19, 2013, at Hamilton County Courthouse, 1111 13th , LL NE Corner, Aurora, Nebraska, before Commissioner Salmon.
2. Gerald D. Slezak (the Taxpayer) was present at the hearing.
3. Howard F. Ach was present for the Fillmore County Board of Equalization (the County).
4. The Subject Property (Subject Property) is an agricultural parcel improved with several outbuildings and a dwelling with a legal description of: W ½ NE ¼ & E ½ NW ¼ less RR ROW 33-7-1, Fillmore County, Nebraska.

Background

5. The Fillmore County Assessor assessed the Subject Property at \$457,445 for tax year 2013.
6. The Taxpayer protested this value to the Fillmore County Board of Equalization and requested an assessed value of \$378,299 for tax year 2013.
7. The Fillmore County Board of Equalization determined that the assessed value of the Subject Property was \$457,445 for tax year 2013.
8. The Taxpayer appealed the determination of the County 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>

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 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 Taxpayer asserted that the system used to assess agricultural land in Nebraska is flawed. He asserted that too much weight is given to soil types, and that other characteristics which effect the actual value of real property are not analyzed
15. He asserted that dryland acres are purchased by buyers with the intent to convert the dryland to irrigated land. He asserted that because these buyers intend to use the land as irrigated land, they are willing to pay more per acre than a buyer who intends to maintain the use as dryland. He asserted that these sales inflate the price of a dryland acre in Fillmore County. He asserted that the dryland which is capable of being converted into irrigated should be a separate and distinct subclass of agricultural property.
16. He also asserted that subclasses should be created for land with obstructions. He asserted that the Subject Property has obstructions and should not be valued like an agricultural property that does not have obstructions. The Taxpayer asserted that a parcel was obstructed when a feature of the land prevented the installation or operation of a center pivot irrigation system.
17. The Taxpayer provided a spreadsheet listing the agricultural sales in Fillmore County used for the valuation of agricultural property in Fillmore County for the 2013 assessment. He provided the property record card for nine sales and explained to the Commission that some sold for less than the 2013 assessed valuations and some sold for

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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) (2012 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).

more. He alleged that the sales of properties encumbered with obstructions resulted in a lower sale price than the sales without obstructions. The County Assessor stated that she does not use the sales of agricultural properties whose use substantially changes after the sale. She explained that she excluded sales wherein the new owner changed the use of the property from dryland to irrigated. She explained that she verifies all sales and that after examination did not see any empirical evidence that the actual value of dryland was affected by the presence or absence of an obstruction. She was unable to quantify any difference in the valuations of the land valuation groupings and stated that all agricultural land was equalized.

18. The Commission finds that while the Taxpayer was able to demonstrate that the properties he determined were obstructed sold for less than properties he determined were unobstructed, the Taxpayer did not provide clear and convincing evidence that the total difference between the sales was entirely attributable to the absence or presence of an obstruction. Without a quantification of the effect of an obstruction on the actual value of the agricultural property, the Commission is unable to determine the actual value for the Subject Property.
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 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 Fillmore County Board of Equalization determining the value of the Subject Property for tax year 2013, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2013 is:

Land	\$439,700
<u>Improvements</u>	<u>\$ 17,745</u>
Total	\$457,445

3. This Decision and Order, if no further action is taken, shall be certified to the Fillmore County Treasurer and the Fillmore County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 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 2013.
7. This Decision and Order is effective on December 27, 2013.

Signed and Sealed: December 27, 2013

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Nancy J. Salmon, Commissioner