

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

Donald J. Curtis Jr.,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 13A 019

Decision and Order Affirming the Decision  
of the Sarpy  
County Board of Equalization

**Procedural Background**

1. The Subject Property is a 19.42 acre agricultural parcel, farmed with dry land row crop. The legal description of the parcel is found in the Case File.
2. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$69,989 for tax year 2013.
3. Donald J. Curtis Jr. (the Taxpayer) protested this value to the County Board and requested an assessed value of \$58,350 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$69,989 for tax year 2013.
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 July 28, 2014, at a Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. The Taxpayer was present at the hearing.
8. Tim Ederer and Martin Becker, employees of the Sarpy County Assessor (the Assessor) and Dan Pittman, the Sarpy County Assessor, were present for the Sarpy County Board of Equalization (the County Board).

**Applicable Law**

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

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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).

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>

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>

### **Findings of Fact and Conclusions of Law**

15. The Subject Property was assessed based upon the agricultural capability of the land, known as land capability groups,<sup>9</sup> and indicated by LVG codes in documentation provided by the Assessor.
16. The Subject Property contained 5.69 acres of dryland classified with an LVG code of 1D and valued by the Assessor at \$4,300 per acre.
17. The Subject Property contained 12.57 acres of dryland classified with an LVG code of 3D1 and valued by the Assessor at \$3,400 per acre.
18. The Subject Property contained 1.16 acres of dryland classified with an LVG code of 4D1 and valued by the Assessor at \$2,400 per acre.

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<sup>2</sup> *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(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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>9</sup> Title 350 Neb. Admin, Code, ch 14 §002.41 “Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification.”

19. Property record cards of comparable property in Sarpy County containing acres with land capability groups of 1D, 3D1, and 4D1 indicated that each of these parcels were also valued by the Assessor in the same amount per acre as was the Subject Property.
20. 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.
21. 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 Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$69,989.
3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 August 7, 2014.

Signed and Sealed: August 7, 2014

SEAL

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Robert W. Hotz, Commissioner