

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

James P. Johnston,  
Appellant,

v.

Chase County Board of Equalization,  
Appellee.

Case No: 14A 060 & 14A 061

Decision and Order Affirming the  
Determinations of the Chase  
County Board of Equalization

1. A Single Commissioner hearing was held on June 9, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. James P. Johnston (the Taxpayer) was present at the hearing.
3. Dotty Bartels, Chase County Assessor, was present for the Chase County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is two parcels of unimproved agricultural land. The legal description of the Subject Property in Case No. 14A 060 is: Pt SE ¼ 34-6-37 (92.48 Ac), Chase County, Nebraska. The legal description of the Subject Property in Case No. 14A 061 is: Pt W 12 SW ¼ 35-6-37 (57.17 Ac), Chase County, Nebraska.

Background

5. The Chase County Assessor (the Assessor) assessed the Subject Property in Case No. 14A 060 at \$99,934 and the Subject Property in Case No. 14A 061 at \$145,686 for tax year 2014.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$73,695 for the Subject Property in Case No. 14A 060 and \$89,851 for the Subject Property in Case No. 14A 061 for tax year 2014.
7. The Chase County Board determined that the taxable value of the Subject Property was \$99,394 for the Subject Property in Case No. 14A 060 and \$145,686 for the Subject Property in Case No. 14A 016 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

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<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).

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>

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 Subject Property includes 62.2 acres enrolled in the Conservation Reserve Enhancement Program (CREP). For tax year 2014 the County Assessor classified and valued all CREP acres as irrigated acres if they maintained the right to irrigate the acres once the enrollment in CREP concluded. The Subject Property’s CREP acres were assessed as irrigated acres.
16. The Department of Revenue has promulgated rules and regulations regarding the assessment of agricultural and horticultural land enrolled in CREP.<sup>9</sup> “Agency regulations that are properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law.”<sup>10</sup> The rules and regulations requires the County Assessor to classify agricultural and horticultural land enrolled in CREP according to its “current use such as

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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) (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.).

<sup>9</sup> See, 350 Neb. Admin. Code, ch. 14 §004.04E (03/15/2009).

<sup>10</sup> *Valpak of Omaha v. Nebraska Dept. of Rev.*, 290 Neb. 497, 503, \_\_\_ N.W.2d \_\_\_ (2015); *Smalley v. Nebraska Department of Health and Human Services*, 283 Neb. 544, 557, 811 N.W.2d 246, 256 (2012) (Citations Omitted).

grassland or timbered grassland[.]”<sup>11</sup> In other words, even though some acres enrolled in CREP may be used for irrigated purposes after the conclusion of the enrollment period, acres enrolled in CREP are required to be classified according to their current use. The testimony from the Taxpayer indicates that the acres enrolled in CREP located on the Subject Property are currently grassland, and according to law should be classified as such.

17. Concerning the process for determining the assessed value of agricultural and horticultural land enrolled in CREP, the Department of Revenue’s rules and regulations provide further guidance: “[T]he values for land enrolled in government program acres should be adjusted to reflect the local market for similar property.”<sup>12</sup> In other words, the actual value of CREP land should be determined not by the market for grassland, but by the market for CREP land. Thus, while the Subject Property should be classified as grassland it does not necessarily follow that the Subject Property should be valued the same as all non-CREP grassland in the County. Instead market information from other CREP land must be examined in order to determine the actual value of the CREP acres using a professionally accepted mass appraisal method.<sup>13</sup>
18. The Taxpayer provided the Commission with a spreadsheet, property record cards, and transfer documents for the sale of eight alleged comparable properties that contain CREP land. The Taxpayer asserted that he verified the sales with the purchasers and derived the per acre value each purchaser had assigned to the CREP acres located on the alleged comparable properties. The Taxpayer then did the same with eight sales of irrigated land. The Taxpayer then derived the average sale price per acre for CREP land in those eight sales and compared it to the average sale price per acre of the eight irrigated sales. Based on the Taxpayer’s calculation the average sale price per acre of the eight CREP sales was 63.74% of the average sale price per acre of the eight irrigated sales.
19. The Taxpayer asserted that the assessed value of CREP acres should therefore equal 63.74% of the assessed value of irrigated acres.
20. The Commission finds that the Taxpayer’s method for determining the assessed value of CREP acres for tax year 2014 is also not in harmony with Nebraska.
21. The Taxpayer’s method is not a commonly accepted mass appraisal or fee appraisal approach. However, the Taxpayer has offered sufficient evidence to allow for a limited review of the assessed value of the Subject Property’s CREP acres for tax year 2014.
22. The Commission notes that the Taxpayer’s alleged comparable sales include sales that occurred after the date of assessment, January 1, 2014. Further, the sales included in the County Assessor’s sales file would not have occurred after September 30, 2013. A time adjustment would be necessary in order to use these sales in the determination of the

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<sup>11</sup> 350 Neb. Admin. Code, ch 14 §004.04E (03/15/2009).

<sup>12</sup> *Id.*

<sup>13</sup> See, *Id.* (indicating that CREP land should be valued using similar properties); See also, Neb. Rev. Stat. §77-112 (Reissue 2009) (indicating the acceptable methods for determining the actual value of real property for assessment purposes).

actual value of CREP acres. No adjustment was provided nor is it calculable from the evidence. The Commission, therefore, gives sales occurring after September 30, 2013, no weight.

23. The assessed values of soils classified as irrigated on the Subject Property for tax year 2014 were \$3,200 and \$3,300. The Commission notes that the Commission determined that assessed value of the agricultural and horticultural land in Chase County was 73% of actual value for tax year 2014.<sup>14</sup> Examining the remaining sales of alleged comparable properties that include CREP acres, the Commission determines that the median sale price per acres is \$4,410. After an applying the 73% factor, the alleged comparable properties suggest a median assessed value for CREP acres of \$3,219.<sup>15</sup>
24. The Commission determines that based on the forgoing there is not clear and convincing evidence that the Subject Property was overvalued for tax year 2014. However, the Commission reiterates that the County Assessor is required to: (1) classify CREP acres according to their actual use and not their potential or highest and best use at some time in the future; and (2) derived the assessed value of CREP acres after an examination of the appropriate appraisals factors derived from other CREP properties.<sup>16</sup>
25. The Commission notes the preceding analysis does not take into account the different soil types located on the CREP parcels and that a more accurate and correct determination of the assessed value of CREP acres would need to examine the potential that different soil types affects the assessed value.
26. 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.
27. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decisions of the Chase County Board of Equalization determining the taxable values of the Subject Property for tax year 2014 are Affirmed.
2. The taxable value of the Subject Property in Case No. 14A 060 for tax year 2014 is \$99,934.
3. The taxable value of the Subject Property in Case No. 14A 061 for tax year 2014 is \$145,686.

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<sup>14</sup> See, 2014 Tax Equalization and Review Commission Determined Levels of Value, [http://www.terc.ne.gov/2014/2014\\_LOV\\_Table.pdf](http://www.terc.ne.gov/2014/2014_LOV_Table.pdf).

<sup>15</sup> \$4,410 x .73 = \$3,219.

<sup>16</sup> See, 350 Neb. Admin. Code, ch. 14 §004.04E (03/15/2009).

4. This Decision and Order, if no further action is taken, shall be certified to the Chase County Treasurer and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2014.
8. This Decision and Order is effective on June 18, 2015.

Signed and Sealed: June 18, 2015

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Nancy J Salmon, Commissioner