

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

Robert W. Weber, et al.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 13SV 001, 13SV 002, 14SV 001,  
14SV 002, 15SV 0001, 16SV 0001,  
13R 531, 13R 532 & 16A 0232

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

**For the Appellant:**

Ronald Reagan,  
Reagan, Melton & Delaney, LLP

**For the Appellee:**

Jimmie Pinkham III,  
Deputy Douglas County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

For tax year 2013 and 2014, the Subject Property consisted of two separate but adjoining parcels: a 20.66 acre parcel improved with a ranch style residential property and other improvements; and an unimproved 26.5 acre parcel. For tax year 2015 and 2016, the two separate parcels were combined into a single 44.646 acre parcel.<sup>1</sup> The legal description of the Subject Property is found at Exhibits 1 through 9. The property record card for the Subject Property is found at Exhibits 10 through 15 and Exhibit 19.

**II. PROCEDURAL HISTORY**

Robert W. Weber (the Taxpayer) filed a Special Valuation Application requesting special valuation classification for the Subject Property for tax years 2013 (2 parcels), 2014 (2 parcels), 2015 (one parcel), and 2016 (one parcel). The Douglas County Assessor's Office (the County Assessor) denied each of the Taxpayer's Special Valuation Applications for tax years 2013 through 2016. The Taxpayer protested these determinations to the Douglas County Board of Equalization (the County Board) and requested that the Subject Property be granted special

---

<sup>1</sup> The Commission notes that there is a difference in the number of acres in the Subject Property when it consisted of two parcels to when it was combined into a single parcel. This difference is unexplained by the record and does not impact the Commissions analysis of the appeals before it.

valuation classification for tax years 2013 through 2016. The County Board denied the Taxpayer's protest of the determination denying the application for Special Valuation status for the Subject Property for tax years 2013 through 2016.<sup>2</sup>

The County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 13R-351 was \$507,800 for tax year 2013.<sup>3</sup> The Taxpayer protested this assessment to the County Board and requested a lower assessed valuation. The County Board determined that the taxable value of this parcel of the Subject Property was \$507,800.<sup>4</sup>

The County Assessor determined that the assessed value of the parcel of the Subject Property found in Case No. 13R-352 was \$222,600 for tax year 2013.<sup>5</sup> The Taxpayer protested this assessment to the County Board and requested a lower assessed valuation. The County Board determined that the taxable value of this parcel of the Subject Property for tax year 2013 was \$168,900.<sup>6</sup>

The County Assessor determined that the assessed value of the combined parcels of the Subject Property was \$695,300 for tax year 2016. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$490,400. The Douglas County Board determined that the taxable value of the Subject Property for tax year 2016 was \$695,300.<sup>7</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Parties submitted a Stipulation and Joint Motion on June 22, 2017, regarding facts and issues in the above captioned appeals. The Commission issued an Order of Acceptance of Stipulation and Order for Hearing and Notice of Hearing on June 26, 2017. The Commission held a hearing on October 19, 2017. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. The parties stipulated to the receipt of exchanged Exhibits 1 through 23 and 25; the Commission received Exhibit 24 over the Taxpayer's objection and Exhibit 26 without objection. At the hearing before the Commission the County raised the issue of the standing of the Taxpayer to bring these appeals and the jurisdiction of the Commission to hear the appeals and requested that the Commission dismiss the appeals. The Commission issued an Order Continuing Hearing with Briefing Schedule on

---

<sup>2</sup> E1 through E6

<sup>3</sup> This is the 20.66 acre parcel that is improved with a residence and outbuilding.

<sup>4</sup> E7

<sup>5</sup> This is the 26.5 acre unimproved parcel.

<sup>6</sup> E8

<sup>7</sup> E9

October 19, 2017. The Commission issued an Order Denying Motion to Dismiss on June 8, 2018, finding that the Taxpayer stated a claim upon which relief may be granted and that the Commission has jurisdiction over the parties and subject matter of these appeals. The June 8, 2018, Order Denying Motion to Dismiss also required the parties to submit a briefing schedule for briefing the arguments on the merits of the appeals. On July 30, 2018, the Commission issued an Order Approving Briefing Schedule. After the submission of briefs by the parties the Commission took the matter under advisement.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>8</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>9</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>10</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>11</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>12</sup>

---

<sup>8</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>9</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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

<sup>11</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>12</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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>13</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>14</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 cross appeal.”<sup>15</sup> The Commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>16</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>17</sup>

## IV. LAW

### A. Valuation

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>18</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 section 77-1371, (2) income approach, and (3) cost approach.”<sup>19</sup> Nebraska courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>20</sup> Taxable value is the

---

<sup>13</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>14</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>15</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>20</sup> *Omaha Country Club* at 180, 829.

percentage of actual value subject to taxation as directed by section 77-201 of the Nebraska Revised Statutes and has the same meaning as assessed value.<sup>21</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>22</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>23</sup> Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>24</sup> Under Section 77-1344, special valuation (i.e. greenbelt status) can only be applied to agricultural or horticultural land.<sup>25</sup>

## **B. Equalization**

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>26</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>27</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>28</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>29</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>30</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>31</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>32</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation

---

<sup>21</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>22</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. §77-201(2) (Reissue 2018).

<sup>25</sup> *Agena v. Lancaster County Bd. of Equalization*, 758 N.W.2d 363, 276 Neb. 851 (Neb. 2008)

<sup>26</sup> *Neb. Const.*, Art. VIII, §1.

<sup>27</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>28</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>29</sup> See *Cabela's Inc.*

<sup>30</sup> *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>31</sup> *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>32</sup> *First Nat. Bank & Trust Co. v. Cty. of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”<sup>33</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>34</sup>

## V. ANALYSIS

The essence of the Taxpayer’s allegation is that the Subject Property is not being treated uniformly and proportionally with other similar property regarding the granting or denial of special valuation status and the subsequent difference in their assessed valuations. The Subject Property is not classified as agricultural or horticultural property subject to special valuation, and the Taxpayer acknowledges that the Subject Property was not entitled to classification as agricultural or horticultural property subject to special valuation for the tax years in question. He alleges that an adjacent parcel which is similar to the Subject Property (the Duda-Seaton Property) was also not entitled to special valuation status but was nonetheless classified as agricultural or horticultural property subject to special valuation. As a result, the Duda-Seaton Property was valued at a much lower amount per acre than the Subject Property. Based on these allegations, the Taxpayer contends that the assessed value of the Subject Property should be lowered to equalize it with the assessed value of the Duda-Seaton Property, either by granting the Subject Property special valuation status or equalizing its per acre assessed valuation with the Duda-Seaton Property.<sup>35</sup>

Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses such as commercial, residential, or recreational.<sup>36</sup> Agricultural or horticultural land which has an actual value reflecting uses other than agricultural or horticultural purposes shall be assessed using special valuation.<sup>37</sup> In order for special valuation to be applicable to a parcel it must be (a) located outside the corporate boundaries of any sanitary and improvement district,

---

<sup>33</sup> *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>34</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>35</sup> For tax years 2013, 2014, 2015 and 2016 the Taxpayer filed appeals of the denial of the application for special valuation status, for tax years 2013 and 2016 the Taxpayer also filed appeals of the assessed value of the Subject Property.

<sup>36</sup> See, Neb. Rev. Stat. §77-1343 (Reissue 2009).

<sup>37</sup> See, Neb. Rev. Stat. 77-1344 (Reissue 2009).

city, or village ... and (b) the land must be agricultural or horticultural land.<sup>38</sup> There is no dispute that the Subject Property and Duda-Seaton Properties are located outside the corporate boundaries of any sanitary and improvement district, city, or village. The Taxpayer alleges that the Duda-Seaton parcel is not used for agricultural or horticultural purposes and for that reason should not qualify for special valuation.

### **Classification of the Duda-Seaton Property**

The Duda-Seaton Property is located directly to the south of the Subject Property. While the Taxpayer's appeals hinge on the use and classification of the Duda-Seaton property, the Property Record File (PRF) showing the County Assessor's determination of use and classification of acres was not produced for any of the tax years at issue. From the exhibits presented and the stipulation of the parties, the Commission has determined the following regarding the Duda-Seaton Property. The Duda-Seaton Property consists of approximately 39.28 acres that the County Assessor's office has determined is agricultural land or horticultural land. Prior to 2013 and continuing through the 2015 tax year the Duda-Seaton parcel was owned by Duda Farms, LLC. During the tax years at issue in these appeals Duda Farms, LLC also owned a large parcel of land located to the East and South-East of the Duda-Seaton parcel directly across North River Drive (the Duda Farms Property). The Duda Farms Property consists of approximately 886 acres classified as agricultural and horticultural as shown on its PRF for each of the tax years at issue; the parties do not dispute the classification or assessment of the Duda Farms Property.<sup>39</sup> In November of 2015 the Duda-Seaton Property was sold to Seaton Holdings, LLC, for \$450,000.<sup>40</sup> After the sale of the Duda-Seaton Property the County Assessor's office has continued to classify it as agricultural or horticultural land.

In 2007 Duda Farms LLC filed a special valuation application for the Duda-Seaton Property. The special valuation application indicated 36.28 acres of the parcel were agricultural, 36.28 acres of intensive use: trees, and 7.2 acres enrolled in the Conservation Reserve Program.<sup>41</sup> The Duda Farms LLC application for special valuation for the Duda-Seaton Property was approved

---

<sup>38</sup> Neb. Rev. Stat. 77-1344(1) (Reissue 2009).

<sup>39</sup> E24 (referred to as Exhibits J by the Parties in their briefs)

<sup>40</sup> E22:1-2

<sup>41</sup> E20:37

by the County Assessor's office.<sup>42</sup> In 2016 Seaton Holdings LLC filed a special valuation application for the Duda-Seaton Property which indicated that 9.41 acres were agricultural as Ag-Hay,<sup>43</sup> with the remaining 26.1 acres listed alternately as not devoted to agricultural or horticultural use<sup>44</sup> or Wasteland.<sup>45</sup> The Seaton Holdings LLC application for special valuation for the Duda-Seaton Property was approved by the County Assessor office.<sup>46</sup>

The Taxpayer contends that the Duda-Seaton Property is not agricultural land or horticultural land and should not be classified as agricultural or horticultural property, and because it is not agricultural or horticultural land it cannot be granted special valuation status. Agricultural land and horticultural land is a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural and horticultural land.<sup>47</sup> 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.<sup>48</sup> Agricultural or horticultural purposes also includes 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 land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production.<sup>49</sup> County Assessors are responsible for inventorying each parcel of agricultural or horticultural land into its current agricultural or horticultural land class. These classes include: irrigated cropland, dryland cropland, grassland, wasteland, government programs land, intensive use areas, forestland and shelterbelt areas, and accretion land.<sup>50</sup> The PRFs for the Duda-Seaton Property were not offered as exhibits so the Commission does not

---

<sup>42</sup> E20:37

<sup>43</sup> E23:2 and E23:3. The application also indicated that 9.41 acres of the Duda-Seaton Property are enrolled in a state or federal program but what program is not indicated.

<sup>44</sup> E23:2

<sup>45</sup> E23:3

<sup>46</sup> E23:1-2

<sup>47</sup> Neb. Rev. Stat. §77-1359(1) (2018 Cum. Supp.)

<sup>48</sup> Neb. Rev. Stat. §77-1359(2)(a) (2018 Cum. Supp.)

<sup>49</sup> Neb. Rev. Stat. §77-1359(2)(b) (2018 Cum. Supp.)

<sup>50</sup> Title 350 Neb. Admin. Code, ch 14 §004.04 (3/9)



know exactly how the County Assessor classified the acres of land on the Duda-Seaton Property.<sup>51</sup>

Examining the special valuation applications and stipulation of the Parties the Commission can determine that when the Duda-Seaton Property was owned by Duda Farms LLC,<sup>52</sup> 7.2 acres of the parcel were enrolled in the Conservation Reserve Program (CRP). Under the CRP a landowner receives payments for converting eligible agricultural land to a conserving use for a set period of time.<sup>53</sup> These 7.2 acres were planted with a cover crop of pine trees and held for possible future agricultural or horticultural use as land enrolled in the CRP. The 7.2 acres of the Duda-Seaton Property enrolled in CRP meet the statutory definition of agricultural or horticultural land and it would be proper to classify them as agricultural or horticultural land.<sup>54</sup> The remaining acres of the Duda-Seaton Property are timber, hilly, and densely forested with ravines and gullies.

“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.”<sup>55</sup>

The acres of the Duda-Seaton Property that are timber, hilly, and densely forested with ravines and gullies are land that cannot be used economically and is not suitable for agricultural

---

<sup>51</sup> The Commission notes that the PRFs for the Duda Farms Property which is exhibit 24 in the record does contain a Land Valuation Summary showing the agricultural land classes for the acres of the property such as 3D1 (a dryland cropland classification), or Waste.

<sup>52</sup> Tax years 2013, 2014, and 2015

<sup>53</sup> See, 7 CFR §1410 et seq.

<sup>54</sup> See, Neb. Rev. Stat 77-1359(2)(b)(i)(Reissue 2018), Title 350 Neb. Admin. Code ch. 14 §004.04E (3/09).

<sup>55</sup> Title 350 Neb. Admin. Code, ch 14 §002.54 (3/09)

or horticultural purposes. The acres of the Duda-Seaton Property that are timber, hilly, and densely forested with ravines and gullies are in the same parcel as the 7.2 acres of agricultural or horticultural land. There are no buildings or other improvements on the Duda-Seaton Property. The acres of the Duda-Seaton Property that are timber, hilly, and densely forested with ravines and gullies, are wasteland and therefore agricultural and horticultural land. Additionally, the acres on the Duda-Seaton parcel that are timber, hilly, and densely forested with ravines and gullies, lie adjacent to and in common ownership or management with another parcel of land used for agricultural or horticultural purposes, the Duda Farm Property directly across North River Drive. As noted earlier, in order for a parcel to be agricultural land and horticultural land it must be primarily used for agricultural or horticultural purposes, which includes wasteland lying in or adjacent to and in common ownership or management with other agricultural and horticultural land. The Duda-Seaton Property is a parcel of land that contains 7.2 acres of CRP with the remaining acres being wasteland lying in and in common ownership or management with other agricultural and horticultural land on the parcel. The use of every acre of the Duda-Seaton Property meets the definition of agricultural or horticultural purposes and therefore the primary use of the parcel is agricultural or horticultural use for tax years 2013, 2014, and 2015. Because the primary use of the parcel is for agricultural or horticultural purposes the parcel is agricultural land or horticultural land for tax years 2013, 2014, and 2015.

For tax year 2016 the Duda-Seaton Property was owned by Seaton Holdings, LLC, and the use of 9.41 acres on the property was different from the prior years. Examining the special valuation applications, stipulations of the parties, and other exhibits submitted by the parties, the Commission can determine that when the Duda-Seaton Property was owned by Seaton Holdings, LLC,<sup>56</sup> 9.41 acres were cleared for hay production. The County Assessor's office initiated a review appraisal of the Duda-Seaton Property to verify whether agricultural or horticultural use continued under the new owner.<sup>57</sup> This review indicated that the Duda-Seaton Property was inspected by the County Assessor's office and that the dead pine trees had been cut down, the stumps were ground, and tillable acres were being prepared for brome grass production.<sup>58</sup> The Taxpayer argues that the amount of land dedicated to brome grass/hay production was

---

<sup>56</sup> Tax year 2016

<sup>57</sup> E23:1

<sup>58</sup> E23:1

insufficient and that the property was not used for brome grass/hay production, rather, it was just being prepared for brome grass/hay production and that is insufficient to qualify as agricultural or horticultural use.

The Taxpayer's arguments regarding the agricultural or horticultural use of the 9.41 acres are not supported by the record before the Commission in these appeals. The primary use of the 9.41 acres cleared and prepared for the cultivation of brome grass/hay is for agricultural or horticultural purposes for tax year 2016 and therefore the 9.41 acres are agricultural or horticultural land. The remaining acres of the Duda-Seaton Property are still timber, hilly, and densely forested with ravines and gullies for the 2016 tax year. This land cannot be used economically and is not suitable for agricultural or horticultural purposes. These acres are in the same parcel as the 9.41 acres of agricultural or horticultural land. There are no buildings or other improvements on the Duda-Seaton Property. The acres of the Duda-Seaton Property that are timber, hilly, and densely forested with ravines and gullies, are wasteland. As noted earlier, in order for a parcel to be agricultural land and horticultural land, it must be primarily used for agricultural or horticultural purposes, which includes wasteland lying in or adjacent to and in common ownership or management with other agricultural and horticultural land. The Duda-Seaton Property is a parcel of land that contains 9.41 acres used for brome grass/hay production with the remaining acres being wasteland lying in and in common ownership or management with other agricultural land and horticultural land on the parcel. The use of every acre of the Duda-Seaton Property meets the definition of agricultural or horticultural purposes and therefore the primary use of the parcel is agricultural or horticultural for tax year 2016. Because the primary use of the parcel is for agricultural or horticultural purposes, the parcel is agricultural land or horticultural land for tax year 2016.

Under Neb. Rev. Stat. Section 77-1344, special valuation (i.e. greenbelt status) can only be applied to agricultural or horticultural land.<sup>59</sup> As demonstrated in the preceding analysis, all of the acres of the Duda-Seaton Property for tax years 2013, 2014, 2015, and 2016, were agricultural land or horticultural land. The County Assessor has determined that all agricultural land or horticultural land in Douglas County has an actual value that reflects uses other than agricultural or horticultural purposes for each of the tax years before the Commission in these

---

<sup>59</sup> *Agena v. Lancaster County Bd. of Equalization*, 758 N.W.2d 363, 276 Neb. 851 (Neb. 2008)

appeals.<sup>60</sup> The Duda-Seaton Property was granted special valuation status for tax years 2013, 2014, 2015 and 2016. The Taxpayer has failed to demonstrate that the County Assessor or the County Board's determination that the Duda-Seaton Property qualified for special valuation status was unreasonable or arbitrary.

### **Classification of the Subject Property**

The Taxpayer alleges that the Subject Property is nearly identical to the Duda-Seaton Property and therefore should be classified the same as the Duda-Seaton Property. The Subject Property consisted of two directly adjacent parcels in tax year 2013 and 2014, and those two parcels were combined into a single parcel for tax years 2015 and 2016 with a total area of 44.646 acres, more or less. Approximately five acres of the Subject Property is improved with a ranch style residence and associated outbuildings and the approximately 40 remaining acres are "timber, hilly, and densely forested."<sup>61</sup> The County Assessor classified the Subject Property as Residential Primesite for the improved parcel and Residential Undevelop[ed] for the unimproved parcel for tax year 2013, as shown on the Property Record Files (PRF).<sup>62</sup> The County Assessor classified the Subject Property as Residential for the improved parcel and Residential Undevelop[ed] for tax year 2014 as shown on the PRF.<sup>63</sup> The County Assessor classified the Subject Property as Market for tax year 2015 and 2016, after they were combined into a single parcel, as shown on the PRF.<sup>64</sup>

One major difference between the Subject Property and the Duda-Seaton Property is that five acres of the Subject Property are dedicated to a ranch style residence and associated outbuildings. Under the Nebraska Supreme Court's decision in *Agena*<sup>65</sup> discussed in the parties' briefs, those five acres, the residence, and associated outbuildings would need to be considered when determining if the primary use of the parcel was for agricultural or horticultural uses. The statutes considered by the Court in *Agena* were changed after that decision was issued, and at all times relevant to these appeals, any acres associated with buildings would be excluded when

---

<sup>60</sup> See, 2013 Report and Opinion of the Property Tax Administrator for Douglas County, 2014 Report and Opinion of the Property Tax Administrator for Douglas County, 2015 Report and Opinion of the Property Tax Administrator for Douglas County, and 2016 Report and Opinion of the Property Tax Administrator for Douglas County

<sup>61</sup> Joint stipulation of the parties.

<sup>62</sup> E13:3, E14:3.

<sup>63</sup> See E10:3, E11:3

<sup>64</sup> E12:3, E15:3

<sup>65</sup> *Agena v. Lancaster County Bd. of Equalization*, 758 N.W.2d 363, 276 Neb. 851 (Neb. 2008)

determining if the remaining acres of a parcel were primarily used for agricultural or horticultural purposes.<sup>66</sup> For this reason the Commission will only look to the 40 acres of the Subject Property that are not associated with buildings when determining its classification or comparability to the unimproved Duda-Seaton Property.

The approximately 40 acres of the Subject Property not associated with buildings are timber, hilly, and densely forested with ravines and gullies. These 40 acres are land that cannot be used economically and is not suitable for agricultural or horticultural purposes. The Taxpayer does not assert that any of the acres of land on the Subject Property are used for agricultural or horticultural purposes. On a special valuation application for the Subject Property the Taxpayer as listed “conservation” and “possible forestry in the future” as uses of some or all of the unimproved 40 acres.<sup>67</sup> The record before the Commission does not demonstrate that the uses listed on the special valuation application are agricultural or horticultural uses. There is no evidence that any acres on the Subject Property are 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; retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act; or enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural. There is no contention or evidence presented that the Taxpayer owns or operates any other agricultural land or horticultural land. The approximately 40 acres of the Subject Property that are timber, hilly, and densely forested with ravines and gullies do not lie in or adjacent to and in common ownership or management with other agricultural and horticultural land. In order for this land to be classified as wasteland it must lie in or adjacent to and in common ownership or management with other agricultural and horticultural land. The Taxpayer has not demonstrated that the classification of the Subject Property as land that is not agricultural or horticultural was unreasonable, arbitrary, or incorrect. Because the Subject Property is not agricultural land or horticultural land, it is not entitled to special valuation; the County Board’s denial of the special

---

<sup>66</sup> See, Neb. Rev. Stat. §77-1359 (1) (Reissue 2018).

<sup>67</sup> E20:6-7

valuation applications for tax years 2013 through 2016 were likewise not unreasonable or arbitrary.

### **Equalization of Assessed Values**

The Taxpayer alleges that the County Board erred by failing to recognize that the Subject Property and the Duda-Seaton Property are nearly identical and that their values should be equalized. Many acres of both the Subject Property and the Duda-Seaton Property are timber, hilly, and densely forested with ravines and gullies that cannot be used economically and are not suitable for agricultural or horticultural purposes. The difference between the parcels is that the Duda-Seaton Property parcel contains other acres that are primarily used for agricultural or horticultural purposes and are classified as agricultural land and horticultural land while the Subject Property does not. When acres that are timber, hilly, and densely forested with ravines and gullies and is not suitable for agricultural or horticultural purposes is located in or adjacent to and in common ownership or management with other agricultural land and horticultural land, they meet the statutory definition of wasteland that qualifies as agricultural land or horticultural land. Without the presence of other agricultural land or horticultural land the acres of the Subject Property that are timber, hilly, and densely forested with ravines and gullies cannot be classified as agricultural land or horticultural land.

The Nebraska Constitution states that taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.<sup>68</sup> The Nebraska Constitution allows the Legislature to provide that agricultural land and horticultural land constitutes a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property.<sup>69</sup> And further that the Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses.<sup>70</sup>

---

<sup>68</sup> Nebraska Constitution Article VII sec. 1 (1).

<sup>69</sup> Nebraska Constitution Article VII sec. 1 (4).

<sup>70</sup> Nebraska Constitution Article VII sec. 1 (5).

The Legislature has adopted statutes that find and declare that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment that shall not be assessed uniformly and proportionately with other real property.<sup>71</sup> The statutes also provide for the special valuation of agricultural or horticultural land that has an actual value reflecting purposes or uses other than agricultural or horticultural purposes or uses.<sup>72</sup> As recognized by the Nebraska Supreme Court, it is unnecessary and improper to equalize the value of nonagricultural, nonhorticultural property with the value of agricultural and horticultural property.<sup>73</sup>

The Taxpayer alleged that the determination of special valuation status for the Duda-Seaton Property was somehow improper because it was owned by a Duda Farms, LLC of which a County Board Clare Duda was a member. The only evidence relating to the participation or influence of that County Board member in the approval of the granting of special valuation determinations is his abstaining from voting on the protest of the Subject Property's special valuation status during the years that the Duda-Seaton parcel was owned by Duda Farms LLC. The Commission finds and determines that the Taxpayer has failed to demonstrate any impropriety regarding the granting or denial of special valuation status to the Subject Property or the Duda-Seaton Property based on the person or entity that owned either of the properties.

## **VI. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

---

<sup>71</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2018).

<sup>72</sup> Neb. Rev. Stat. §77-1343 et. seq. (Reissue 2018)

<sup>73</sup> *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 835 N.W.2d 750 (2013).

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization denying the special valuation applications for the Subject Property for tax years 2013, 2014, 2015 and 2016 are affirmed.
2. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2013 are affirmed.<sup>74</sup>
3. The assessed value of the Subject Property for tax year 2013 is:

### Case No. 13R 0351

Land:	\$206,000
<u>Improvements:</u>	<u>\$301,800</u>
Total:	\$507,800

### Case No. 13R-352

<u>Land:</u>	<u>\$168,900</u>
Total:	\$168,900

4. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2016 is affirmed.
5. The assessed value of the Subject Property for tax year 2016 is:

Land:	\$374,900
<u>Improvements:</u>	<u>\$320,400</u>
Total:	\$695,300

6. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018)

---

<sup>74</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 considered by the County Board of Equalization at the protest proceeding.



7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax year 2013, 2014, 2015 and 2016.
10. This Decision and Order is effective for purposes of appeal on December 17, 2019.<sup>75</sup>

Signed and Sealed: December 17, 2019

---

Steven A. Keetle, Commissioner

SEAL

---

James D. Kuhn, Commissioner

---

<sup>75</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.