

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

Glaser Holding, LLC,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 17A 0090

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

**Background**

1. The Subject Property is a 200 acre parcel located in rural Otoe County, Nebraska. The legal description of the parcel is 8-8-10 NW1/4 & W1/2 W1/2 NE1/4, 200 ac, Otoe County, Nebraska.
2. The Otoe County Assessor (the Assessor) assessed the Subject Property at \$795,530 for tax year 2017.
3. Glaser Holding, LLC (the Taxpayer) protested this value to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$733,650 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$795,530 for tax year 2017.
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 February 15, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. J.L. Spray and Christina Usher were present at the hearing for the Taxpayer. William D. Glaser, Managing Member, was also present.
8. John Palmtag was present for the County Board. Christina Smallfoot, Otoe County Assessor, was also present.

**Applicable Law**

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</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

11. 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>
12. 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>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. 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>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer purchased the Subject Property for \$1,005,000 on June 24, 2016.
17. At all relevant times, the Subject Property was located in Market Area 8000 of Otoe County.
18. As of the effective date, January 1, 2017, the Assessor determined the Subject Property should be assessed as agricultural land and assessed each acre based upon soil type and land capability groups (LCG),<sup>9</sup> also known as land valuation groupings (LVG), as shown in the property record card for the Subject Property.
19. The per acre assessment by soil type and LVG was consistent with the Otoe County 2017 Average Acre Value Comparison,<sup>10</sup> and resulted in an assessed value of \$795,530.

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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>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<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. 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>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> A land capability group (LCG) is a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management. ... A LCG is determined for each kind of soil and its current land use. Title 350 Neb. Admin. Code, Chapter 14, Section 004.08E, Revised 3/15/09.

<sup>10</sup> 2017 Reports & Opinions of the Property Tax Administrator, Otoe County, April 2017, Exhibit 66, page 28.

20. Sales of agricultural land in Otoe County analyzed by the Assessor for tax year 2017 were valued at an assessed to sale ratio of 73%.<sup>11</sup>
21. The Taxpayer asserts that since the sale of the Subject Property occurred only six months prior to the effective date, the better indicator of value for the Subject Property would be to multiply the actual sale price of \$1,005,000 by 73%, resulting in an assessed value of \$733,650.
22. Sale price is not synonymous with actual value or fair market value.<sup>12</sup> The statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.<sup>13</sup>
23. If the Commission were to adopt the Taxpayer's suggested methodology, the acres of the Subject Property would be assessed at less per acre per LVG than the other Market Area 8000 agricultural properties in Otoe County. Further, the Taxpayer's suggested methodology is not a professionally accepted mass appraisal method, as prescribed by Nebraska law.<sup>14</sup>
24. The Commission finds that there is no clear and convincing evidence that the methodology used by the Assessor was arbitrary or unreasonable. It follows that the County Board's reliance on the assessed value resulting from that methodology was not arbitrary or unreasonable.
25. 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.
26. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is \$795,530.
3. This Decision and Order, if no further action is taken, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

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<sup>11</sup> 2017 Reports & Opinions of the Property Tax Administrator, Otoe County, April 2017, Exhibit 66, page 16.

<sup>12</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>13</sup> *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999).

<sup>14</sup> See Neb. Rev. Stat. § 77-112 (Reissue 2018).

5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective on March 27, 2020.

Signed and Sealed: March 27, 2020

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Robert W. Hotz, Commissioner