

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

Glaser Holding Hunting, LLC,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 17R 0150

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

**Background**

1. The Subject Property consists of a 109.9 acre parcel in rural Otoe County, Nebraska, improved with a 1,248 square foot residence and outbuildings. The legal description of the parcel is 33-8-10, SE1/4 NW1/4 & N1/2 SW1/4 less a 10.1 acre tract, 109.9 ac., Otoe County, Nebraska.
2. The Otoe County Assessor (the County Assessor) assessed the Subject Property at \$605,450 for tax year 2017. Glaser Holding Hunting, LLC, (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed value of \$454,087 for tax year 2017. The County Board determined that the taxable value of the Subject Property was \$605,450 for tax year 2017.
3. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
4. 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.
5. J.L. Spray and Christina Usher were present at the hearing for the Taxpayer. William Glaser, Managing Member, was also present.
6. John Palmtag was present for the County Board. Christina Smallfoot, Otoe County Assessor, was also present.

**Applicable Law**

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

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<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 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).

9. 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>
10. 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>
11. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
12. 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>
13. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

14. The Taxpayer purchased the Subject Property on September 30, 2016 for \$1,100,000. However, the sale included an 80 acre tract with no improvements, adjacent to and south of the Subject Property.<sup>9</sup>
15. Just prior to the sale, on September 25, 2016, the County Assessor’s staff conducted a phone interview with Mr. Glaser, asking questions from a Sales Verification Questionnaire and recording his answers. In response to Question 12 of the Questionnaire, asking what influenced the purchase, the recorded summary of Mr. Glaser’s response was, “hunting & get away place.”
16. At the appeal hearing, the County Assessor stated that a physical inspection of the Subject Property had been conducted, and that the Taxpayer had not responded to a requested land use inventory.
17. At the appeal hearing, Mr. Glaser stated he personally used the residence on the Subject Property approximately 40 days during tax year 2017.

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<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> That 80 acre tract is not on appeal.

18. Glaser also stated that the Taxpayer and another party had entered into a hunting lease during the relevant time period. Payment received by the Taxpayer for the hunting lease was \$10,000 in 2017. The lessee of the lease raised quail and pheasant on the Subject Property, where they were penned and fed, for the purposes of rental agreements with hunters.
19. Glaser also indicated that Conservation Reserve Program (CRP) payments of approximately \$12,500 were received by the Taxpayer for acres on the Subject Property for 2017. He stated that combined CRP payments of \$25,000 were received for the Subject Property and the adjacent 80 acre parcel mentioned above. Smallfoot indicated that her inspection and review did not disclose the presence of any CRP acres on the Subject Property for tax year 2017. No documents were provided to the Commission to verify CRP payments relating to the Subject Property.
20. At the appeal hearing, the Taxpayer did not dispute the assessments of the residential component of the Subject Property.
21. As of the effective date of January 1, 2017, the County Assessor classified the non-residential land component of the parcel as recreational land, not as agricultural land.
22. Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, 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 land and horticultural land.<sup>10</sup>
23. 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>11</sup>
24. Agricultural or horticultural purposes includes the following uses of land: 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>12</sup>
25. For purposes of the assessment classification of recreational land, recreational means all parcels predominantly used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of these uses are fishing, hunting, camping, boating, hiking, picnicking, or having an access or view that simply allows diversion, entertainment, and relaxation.<sup>13</sup>
26. The Taxpayer asserts that the 2016 purchase price of the Subject Property combined with the adjacent 80 acre parcel should be directly used to indicate the taxable value of the Subject Property for tax year 2017. Sale price is not synonymous with actual value or fair

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<sup>10</sup> Neb. Rev. Stat. § 77-1359(1) (2016 Cum. Supp.), emphasis added.

<sup>11</sup> Neb. Rev. Stat. § 77-1359(2) (2016 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. § 77-1359(2),(2)(a) (2016 Cum. Supp.), emphasis added.

<sup>13</sup> Title 350 Neb. Admin. Code, Chapter 10, Section 002.15J, Revised 10/26/14.

market value. 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>14</sup> If the purchase price were directly used, once subtracting the undisputed value of the improvements and of the farm home site,<sup>15</sup> the per acre value of the land would be slightly lower than the per acre value as assessed as recreational land.<sup>16</sup>

27. However, the Commission finds that the sale price of the Subject Property, in a combined sale with an adjacent parcel, is not clearly indicative of the actual value of the Subject Property for the following tax year.
28. The Taxpayer's proposed methodology is also problematic in that it tends to treat each acre of the Subject Property (and each acre of the 80 acre parcel in the combined sale) as having the same value as every other acre within the same sale. This is contrary to prescribed assessment methods where the value of each agricultural acre is based upon soil type and land capability groups (LCG).<sup>17</sup>
29. The Taxpayer also asserts that the Subject Property should be classified as agricultural land, not as recreational land. We find that when the Taxpayer received \$12,500 for CRP payments for tax year 2017, and that there was also a hunting lease in the amount of \$10,000 for the same time period there is sufficient reason to conclude that the Subject Property was not primarily used for agricultural purposes.
30. Based upon the information provided to the Commission, including the statements by the witnesses Mr. Glaser and Ms. Smallfoot, the Commission concludes that the Subject Property was properly classified as a recreational parcel.
31. 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. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable.
32. 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.

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<sup>14</sup> *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999).

<sup>15</sup> See, Neb. Rev. Stat. § 77-1359(3) (2016 Cum. Supp.).

<sup>16</sup> Sale price of \$1,100,000 minus the improvements value of \$231,790 equals \$868,210, minus a home site value of \$12,000 = \$856,210, divided by 188.9 acres = \$4,533 per acre.  $\$4,533 \times 73\% = \$3,309$  per acre. The 2017 assessment of the Subject Property as recreational land is \$3,400 per acre. The home site size and value inserted above are consistent with other market area 8000 assessments. 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>17</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.

2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 373,660
<u>Improvements</u>	<u>\$ 231,790</u>
Total	\$ 605,450

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.
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