

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

BRIAN J. MCALLISTER,
APPELLANT,

CASE NO: 21A 0476

V.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

For the Appellant:

Brian J. McAllister

For the Appellee:

Daniel J. Zieg,
Deputy Lancaster County
Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a 20.76-acre parcel located in Lancaster County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 3.

II. PROCEDURAL HISTORY

The Lancaster County Assessor determined that the assessed value of the Subject Property was \$199,000 for tax year 2021. Brian J. McAllister (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board) and requested a

taxable value of \$121,795. The County Board determined that the taxable value of the Subject Property for tax year 2021 was \$199,000.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 10, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1, 2, 3, 9, 23, and 51 were admitted into evidence. Items marked as Exhibits 4-8, 10-22, 24-50, and 52-55 were not offered or admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.² 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.³

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

¹ Exhibit 1.

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.⁸

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.⁹ The Commission may take notice of judicially cognizable facts, 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.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT LAW

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.¹²

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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹³ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷ Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.¹⁸

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Omaha Country Club* at 180, 829.

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

The Legislature has found that “agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.”¹⁹

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.²⁰

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²¹

Under Neb. Rev. Stat. § 77-1359:

(2)(a) 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.

(b) Agricultural or horticultural purposes includes the following uses of land:

(i) 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

¹⁹ Neb. Rev. Stat. § 77-1359 (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-132 (Reissue 2018).

(ii) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production; and

(c) Whether a parcel or land is primarily used for agricultural and horticultural purposes shall be determined without regard to whether some or all of the parcel is platted and subdivided into separate lots or developed with improvements consisting of streets, sidewalks, curbs, gutters, sewer lines, water lines, or utility lines.

(3) Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision; and

(4) Farm site means the portion of land contiguous to land actively devoted to agricultural which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.²²

Farm home sites must not be classified as agricultural or horticultural land.²³ Farm sites will not be classified as agricultural or horticultural land and will not include a home site.²⁴

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.”²⁵ The Legislature enacted laws to state “Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the

²² Neb. Rev. Stat. § 77-1359(2)-(4) (Reissue 2018).

²³ Title 350 Neb. Admin. Code ch 10 §002.09A (10/14)

²⁴ Title 350 Neb. Admin. Code ch 10 §002.08 (10/14)

²⁵ Neb. Const. Art. VIII, §1(5).

qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special valuation as defined in section 77-1343.”²⁶ Special valuation is defined as “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.”²⁷

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Taxpayer called Derrick Niederklein, Chief Field Deputy for the Lancaster County Assessor’s Office, who testified regarding the assessment of the Subject Property as well as other properties with a farm home site and/or farm site in the county. Niederklein discussed the inspection of the Subject Property and the valuation of the portions of the Subject Property designated Farm Home Site and Farm Site.

B. Analysis

The unresolved issue before the Commission is whether the land on the Subject Property classified as “farm site” and “farm home site” should be classified as agricultural or horticultural land subject to special valuation and be valued at seventy-five percent of its special value.

The Taxpayer alleges that for purposes of special valuation “farm sites” and “farm home sites” are agricultural and horticultural land and are required to be valued at seventy five percent of their special valuation. In support of this allegation the Taxpayer asserts that for purposes of special valuation Neb. Rev. Stat. §77-1343(1) states that “[a]gricultural or horticultural land means that land as defined in section 77-1359[.]”²⁸ Because Neb. Rev. Stat. §77-1359 defines “farm

²⁶ Neb. Rev. Stat. § 77-201(3) (Reissue 2018).

²⁷ Neb. Rev. Stat. §77-1343(5) (Reissue 2018).

²⁸ Neb. Rev. Stat. §77-1343(1) (Reissue 2018)

site” and “farm home site” as well as “agricultural and horticultural land,” the Taxpayer asserts that the Commission must find that “agricultural land and horticultural land,” “farm site” and “farm home site” are all three agricultural and horticultural land subject to special valuation under the definition found in Neb. Rev. Stat. §77-1343(1).

When interpreting a statute, the Commission gives statutory language its plain and ordinary meaning and will not look beyond the statute to determine the legislative intent when the words are plain, direct, and unambiguous. Components of a series or collection of statutes pertaining to a certain subject matter are in *pari materia* and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.²⁹

While the Taxpayer stresses the complete language of section 77-1359, is being ignored by the County, this case turns on the meaning of the language found in 77-1343 and in particular the word “that” in the phrase “[a]gricultural or horticultural land means *that* land as defined in section 77-1359[.]”³⁰ The Taxpayer’s assertion rests on reading this language as: “agricultural or horticultural land means *all* land as defined in section 77-1359.”³¹ The language of 77-1343 may also be read as: “[a]gricultural or horticultural land means *agricultural or horticultural* land as defined in section 77-1359[.]”³² Looking at this sentence alone does not resolve the question of which of these interpretations is the correct one and the Commission must look to the collection of statutes that cover the subject of agricultural or horticultural land and special valuation.

The Nebraska Constitution allows agricultural or horticultural land to be a separate class of real property for valuation purposes and

²⁹ *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 766, 896 N.W.2d 887, 898 (2017).

³⁰ Neb. Rev. Stat. §77-1343(1) (Reissue 2018) Emphasis added.

³¹ Neb. Rev. Stat. §77-1343(1) (Reissue 2018) except “that” replaced with “all.”

³² Neb. Rev. Stat. §77-1343(1) (Reissue 2018) except “that” replaced with “agricultural or horticultural.”

further authorizes the Legislature to value land actively devoted to agricultural or horticultural use at a value which such land has for agricultural or horticultural use without regard to value for other purposes or uses.³³ With this authority the legislature determined that agricultural or horticultural land could be assessed at seventy five percent of actual value and land that qualified for special valuation could be valued at seventy five percent of its special valuation.³⁴

Statutes were adopted to address the valuation of land which qualified for special valuation including the purpose and definition language found in Neb. Rev. Stat. §77-1343.³⁵ The purpose of the special valuation statutes is to “provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses.”³⁶ Rather than stating a definition of agricultural or horticultural land in this section the statutes refer to Neb. Rev. Stat. §77-1359 which contains the definitions pertaining to the valuation of agricultural or horticultural land not subject to special valuation.³⁷

As noted earlier, the Taxpayer asserts that the definition of agricultural and horticultural land for special valuation purposes includes all types of land found in all subsections of Neb. Rev. Stat. §77-1359. The Commission cannot reach the interpretation of the statute asserted by the Taxpayer while considering and construing all statutes pertaining to the subject matter before the Commission in a way that they are consistent, harmonious, and sensible. The language of Neb. Rev. Stat. §77-1359(1) defining agricultural land and horticultural land as a parcel of land, “excluding land associated with a

³³ Nebraska Constitution Art VIII §1 (4) & (5).

³⁴ Neb. Rev. Stat. §22-201 (2) & (3) (Reissue 2018) (the Commission acknowledges that there is a different level of assessment for repayment of certain school bonds, but that portion of the statutes is not relevant to the determination of this appeal.

³⁵ See, Neb. Rev. State §§77-1342 to 77-1347.01 (Reissue 2018)

³⁶ Neb Rev Stat §77-1343 (Reissue 2018)

³⁷ Neb. Rev. Stat. §77-1359 (Reissue 2018)

building or enclosed structure located on the parcel,” which is primarily used for agricultural or horticultural purposes. The Taxpayers interpretation would include land associated with buildings or other improvements under the definition of agricultural or horticultural land. The Taxpayer’s assertion would also mean that the definition of agricultural and horticultural land would be different for special valuation than it would be for all other types of agricultural or horticultural valuation. Additionally, the Taxpayer’s interpretation would include “Farm Home Site” land, which is by definition used for residential purposes, as part of land used for agricultural and horticultural purposes. Making “Farm Home Site” land agricultural or horticultural land for special valuation purposes would also conflict with the language of Neb. Rev. Stat. §77-201(3).³⁸

In interpreting a statute, there is a presumption that the Legislature intended a sensible rather than absurd result in enacting the statute.³⁹ The Commission finds that the Taxpayer’s allegations regarding the assessment of “Farm Home Site” and “Farm Site” land as agricultural or horticultural land subject to special valuation would result in an absurd result and therefore are without merit.

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 determination. The Commission also finds that there is not clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is affirmed.

³⁸ Neb. Rev. Stat. §22-201 (2) & (3) (Reissue 2018)

³⁹ *Wisner v. Vandelay Investments*, 300 Neb. 825, 858, 916 N.W.2d 698, 724 (2018).

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2021 is affirmed.
2. The assessed value of the Subject Property for tax year 2021 is: **\$199,000.**
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2021.
7. This Decision and Order is effective for purposes of appeal on April 1, 2024.⁴⁰

Signed and Sealed: April 1, 2024

SEAL



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

⁴⁰ 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.