

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

BRIAN MCALLISTER,
APPELLANT,

CASE NO: 23A 1372

V.

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

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved agricultural parcel in Lancaster County, parcel number 22-11-200-008-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$505,200 for tax year 2023.
3. Brian McAllister (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$505,200 for tax year 2023.
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 March 27, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie Russell.
7. Brian McAllister was present at the hearing for the Taxpayer.
8. Tim Sealock (Appraiser) was present for the County Board.

II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."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 to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² 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, 759 N.W.2d 464, 473 (2009).

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

⁴ *Id.* at 283-84.

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

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is an improved, agricultural property with 1 acre home site land, .66-acre farm site land, 10.72 acres wasteland, 77.34 acres dryland and 7.92 acres grassland for a total of 97.64 acres. There is also a residential 1.5 story home on the property and a farm utility building.
17. The Taxpayer stated that Lancaster County is not looking at Neb. Rev. Stat. §77-1359 in its entirety to classify and value the land of the Subject Property and specifically referenced Nebraska State Constitution Article VIII-1(1, 4, 5), Neb. Rev. Stat. §77-201(2), §77-1343(1,5) to substantiate this argument. The Taxpayer opined that the home site and farm site valuations should be treated as agricultural property and valued at 75% of market value.
18. The Nebraska Constitution Art. VIII §1 (4) states that the Legislature may provide that agricultural land and horticultural land, as defined by Legislature, shall constitute a separate and distinct class of real property for purposes of taxation that results in values uniform and proportionate upon all property within the class of agricultural land and horticultural land. Further, Neb. Rev. Stat. §77-1359 defines agriculture and horticultural land as:

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

...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;

(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...

(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 agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

19. The Taxpayer also drew attention to the annotation to Neb. Rev. Stat. §77-1359 which states “The inclusion of the term “parcel” requires a county assessor to consider the use of an entire tract of land, including any homesite, to determine whether that property qualifies as agricultural,”⁹ to support the opinion that home sites should be considered as a part of the agricultural and horticultural value, not residential. The Commission views this interpretation as irrational as this would construe the plain meaning of the individual subsections of Neb. Rev. Stat. §77-1359.

20. As the text of the statute plainly indicates, agricultural land is that land which is used primarily for agricultural purposes. Agricultural purposes mean that the land is used for the commercial production of any plant or animal product in a raw or unprocessed state. The Taxpayer has not demonstrated the

⁹ *Agena v Lancaster Cty. Bd. Of Equal.*, 276 Neb. 851, 758 N.W.2d 363 (2008).

portion of land assessed as the farm home site was used for the commercial production of plant or animal products. Further, the statute specifically excepts the land directly associated with the improvements on the farm home site from valuation as agricultural and horticultural land.

21. While the Taxpayer is correct that a County Assessor must consider the use of the *entire* parcel when determining the primary use of the parcel, the statute does not mandate a County Assessor to assess all acres of a parcel as agricultural. To the contrary, the statute mandates an assessor to except a farm home site and any other land associated with a building or enclosed structure from agricultural valuation.
22. The Appraiser stated that the Subject Property was physically inspected in October 2022 and provided that the residential property and farm utility building are valued using a mass appraisal multiple regression analysis approach to valuation while also providing a Comparable Sales Report to support the current valuation.
23. The Taxpayer did not provide any information to refute the value of the Subject Property home site or farm site land, or the value of the improvements as set by the County Board of Equalization (CBOE).
24. The Appraiser stated that there is one market area for agricultural and horticultural land in Lancaster County. Agricultural and horticultural land values are set by the distinct Land Capability Groups (LCG) so that all like uses of land by specific LCGs are valued the same across the county according to the class of agricultural property, i.e. irrigated land, dryland, and grassland classes. Home site and farm site values are also valued the same across the agricultural and horticultural market area properties with the first acre of home site land valued at \$99,000 and the first acre of farm site valued at \$6,000. Wasteland values are set using an abstraction methodology in conjunction with analysis of Wetland Reserve

Program (WRP) sales, and non-influenced agricultural sales from neighboring counties to include Butler, Gage, Johnson, Jefferson, Otoe, Pawnee, Richardson, and Saline counties.

- 25. The Taxpayer did not provide clear and convincing evidence to refute the individual LCG agricultural and horticultural class values nor the total agricultural land value of the Subject Property as set by the CBOE.
- 26. The Taxpayer did not provide clear and convincing evidence to refute the sizes of the home site and farm site land acres as provided by the Appraiser for the Subject Property.
- 27. The Commission further finds that the County has interpreted the law in its plain, direct, and unambiguous meaning during the classification of the Subject Property.
- 28. 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.
- 29. 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.

IV. 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 2023 is affirmed.
- 2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$465,000
<u>Improvements</u>	<u>\$ 40,200</u>
Total	\$505,200

- 3. This Decision and Order, if no further action is taken, 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 2023.
7. This Decision and Order is effective on May 22, 2024.

Signed and Sealed: May 22, 2024



Jackie S. Russell, Commissioner