

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

Glaser Holding Hunting, LLC,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case No: 17R 0151

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

### **Background**

1. The Subject Property consists of a 120 acre parcel in rural Otoe County, Nebraska, improved with a 1,080 square foot residence and an outbuilding. The legal description of each parcel is 33-8-10, NE1/4 NW1/4 & W1/2 NW1/4 120 ac., Otoe County, Nebraska.
2. The County Assessor assessed the Subject Property at \$526,540 for tax year 2017. The Taxpayer protested this value to the County Board and requested an assessed value of \$348,840. The County Board determined that the taxable value of the Subject Property was \$526,540.
3. The Taxpayer appealed the determinations 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>
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

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<sup>1</sup> See, 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).

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 August 31, 2015 for \$535,000.
15. After the sale, on October 5, 2015, the 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, a check mark was made next to the item “location.”
16. At the appeal hearing, Ms. Smallfoot stated that a physical inspection of the Subject Property had not been conducted, and it was unclear whether the Assessor’s office had requested that the Taxpayer respond to a land use inventory.
17. Mr. Glaser stated that some of the acres of the Subject Property were enrolled in the Conservation Reserve Program (CRP), and that payments of \$4,000 were received by the Taxpayer for acres on the Subject Property for 2017. However, no documents were provided to the Commission to verify CRP payments relating to the Subject Property.
18. Glaser also indicated that CRP hay was harvested from the Subject Property under a cash rent agreement the Taxpayer had with another party. The Taxpayer received cash rent payments amounting to \$3,875 for 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).

19. When asked about other uses of the Subject Property, Glaser stated that no part of the Subject Property was subject to any kind of a hunting lease or other recreational use.
20. At the appeal hearing, the Taxpayer did not dispute the assessment of the residential component of the Subject Property.
21. Beginning with the 2017 assessment, the non-residential land component of the Subject Property was classified as recreational rather than as agricultural. The Taxpayer's primary contention on appeal is that the property should not be classified as recreational.
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>9</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>10</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>11</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>12</sup>
26. The Taxpayer asserts that the 2015 purchase price of the Subject Property 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 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>13</sup> If the purchase price were directly used, once subtracting the undisputed value of the improvements and of the farm home site,<sup>14</sup> the per acre value of the land would be substantially less than the per acre value as assessed as recreational land.<sup>15</sup> However, the Commission concludes that the

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<sup>9</sup> Neb. Rev. Stat. § 77-1359(1) (2016 Cum. Supp.), emphasis added.

<sup>10</sup> Neb. Rev. Stat. § 77-1359(2) (2016 Cum. Supp.).

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

<sup>12</sup> Title 350 Neb. Admin. Code, Chapter 10, Section 002.15J, Revised 10/26/14.

<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. § 77-1359(3) (2016 Cum. Supp.).

<sup>15</sup> Sale price of \$535,000 minus the improvements value of \$118,540 = \$416,460, minus a home site value of \$12,000 = \$402,460, divided by 116.02 acres = \$3,469 per acre. \$3,469 x 73% = \$2,532 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

purchase price of the Subject Property is not clearly indicative of the actual value of the Subject Property for the following tax year.

27. The Taxpayer's proposed methodology is also problematic in that it tends to treat each acre of the Subject Property 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>16</sup>
28. The Taxpayer also asserts that the Subject Property should be classified as agricultural land, not as recreational land.
29. Based upon the information provided to the Commission, including the statements by the witnesses Mr. Glaser and Ms. Smallfoot, the Commission finds that the Subject Property was not properly classified as a recreational parcel. We find instead that when the Taxpayer received \$4,000 for CRP payments, received cash rents of \$3,875 for the purpose of haying the grass, and that there was no hunting lease or other known recreational use of the Subject Property for the same time period, there is clear and convincing evidence to find that the Subject Property was primarily used for agricultural purposes as of the effective date, January 1, 2017, and should have been assessed as agricultural land.
30. In order to properly determine the assessed value of the agricultural acres of the Subject Property for tax year 2017, the Commission relies in part upon the property record card for tax year 2016, which lists for each of the 120 acres the soil types and land capability groups (LCG),<sup>17</sup> also known as land valuation groupings (LVG). The Commission also relies upon the Otoe County 2017 Average Acre Value Comparison.<sup>18</sup> The Commission also notes that one acre should be valued as a farm home site,<sup>19</sup> and that 3.98 acres of road should have no assessed value.
31. The Commission will also rely upon the 2017 assessment of the improvements, as they were not disputed at the appeal hearing, and there was no persuasive information provided to change those values.
32. Therefore, the Commission finds that the land value of the Subject Property is \$226,184 and the improvement value of the Subject Property is \$118,540, for a total taxable value of the Subject Property for tax year 2017 of \$344,724, as shown in the table below:

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8000 assessments. The number of acres is also adjusted by 2.98 acres for roads, which have no assessed value. 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>16</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>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.

<sup>18</sup> See, 2017 Reports & Opinions of the Property Tax Administrator, Otoe County, April 2017, Exhibit 66, page 28. The 2016 property record card includes 6.83 acres under LVG codes 2T and 2T1, presumably acres with timber. Since the Average Acre Value Comparison does not include assessed values for timber, the Commission will use the 2016 values. Otherwise, the Commission will apply the 2017 values to the acres of the 2G1, 2G, 3G1, and 4G1 LVG codes.

<sup>19</sup> See, Neb. Rev. Stat. § 77-1359(3) (2016 Cum. Supp.).

	Acres	2017 Average Acre Value	2016 Assessment	Assessment Total
2G	20.19	\$2,160		\$43,610
4G1	58.24	\$1,750		\$101,920
3G1	28.22	\$2,030		\$57,287
2G1	1.54	\$2,180		\$3,357
2T	3.71		\$1,150	\$4,270
2T1	3.12		\$1,200	\$3,740
Home Site	1.00			\$12,000
Road	3.98			\$0
Improvements				\$118,540
<b>Taxable Value</b>				<b>\$344,724</b>

33. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
34. The Taxpayer has 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 vacated and reversed.

## 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 vacated and reversed.<sup>20</sup>
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$226,184
<u>Improvements</u>	\$118,540
Total	\$344,724

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.

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<sup>20</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 statements and documents that may not have been considered by the County Board of Equalization at the protest proceeding.

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