

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

David and Janet L. Vermeer,
Appellant,

v.

Johnson County Board of Equalization,
Appellee.

Case Nos: 17A 0062, 17A 0063, 18A 0015
& 18A 0016

Decision and Order Affirming the Decisions
of the
Johnson County Board of Equalization

Background

1. The Subject Property in Case Nos. 17A 0062 and 18A 0016 is a 76.89 acre agricultural parcel with no improvements. The legal description of the parcel is found in the Case File.
2. For Case No. 17A 0062, the Johnson County Assessor (the County Assessor) assessed the Subject Property at \$517,217 for tax year 2017. The Taxpayer protested this assessed value to the Johnson County Board of Equalization (the County Board) and requested an assessed value of \$418,946 for tax year 2017. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$517,217.
3. For Case No. 18A 0016, for tax year 2018, the County Assessor assessed the Subject Property at \$517,217. The Taxpayer protested this value to the County Board and requested an assessed value of \$387,913 for tax year 2018. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$517,217.
4. The Subject Property in Case Nos. 17A 0063 and 18A 0015 is an 80 acre agricultural parcel with improvements. The legal description of the parcel is found in the Case File.
5. For Case No. 17A 0063, the County Assessor assessed the Subject Property at \$713,926 for tax year 2017. The Taxpayer protested this value to the County Board and requested an assessed value of \$598,584 for tax year 2017. The County Board determined that the taxable value of the Subject Property was \$704,575 for tax year 2017.
6. For Case No. 18A 0015, the County Assessor assessed the Subject Property at \$704,575 for tax year 2018. The Taxpayer protested this value to the County Board and requested an assessed value of \$573,498 for tax year 2018. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$702,784.
7. The Taxpayer appealed each of the four abovementioned decisions of the County Board to the Tax Equalization and Review Commission (the Commission).
8. A Single Commissioner hearing was held on November 30, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
9. Attorney Ann K. Post was present for the Taxpayer, David Vermeer, who was also present at the hearing.

10. Benjamin Beethe, Johnson County Attorney, was present for the County Board. Also present at the hearing was Karen Koehler, the Johnson County Assessor.

Applicable Law

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
12. The Commission's review of the determination of the County Board of Equalization is de novo.²
13. 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
14. 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
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
16. 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
17. Irrigated Cropland includes all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.⁸
18. 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

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

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 (2009).

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

⁴ *Id.*

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

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

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

⁸ Title 350, Chapter 14, §002.21B, Rev. 3/15/09.

current land use based upon mapping by the United States Department of Agriculture, Natural Resources Conservation Service.⁹

19. Due to the wide range of climate and soils in Nebraska, there is a minimum of 12 LCGs to classify the various kinds of soil by land use throughout the state. Some counties may not have every land capability group. Four principal LCGs are established for each of the following agricultural uses and they are coded as shown below: (1) Irrigated cropland (includes irrigated grassland) 1A, 2A, 3A, and 4A, (2) Dryland cropland 1D, 2D, 3D, and 4D, and (3) Grassland 1G, 2G, 3G, and 4G.¹⁰
20. LCG 1 includes soils that generally have the capability to produce high to very high yields of grain or forage crops, including native and introduced grasses, and foods and crops produced for processing such as, soybeans, corn, sugar beets, potatoes, field beans, and others.¹¹
21. LCG 2 includes soils that have the capability to produce moderately high to above average yields of either grain or forage crops, including native and introduced grasses, and foods and crops produced for processing. Soils in this group have moderate limitations and hazards that affect use and management.¹²
22. LCG 3 includes soils that have the capability to produce average or moderately low yields of either grain or forage crops, including native and introduced grasses, and foods and crops produced for processing. Soils in this group have moderately severe limitations and hazards that affect use and management.¹³
23. LCG 4 includes soils that have the capability to produce low or very low yields of either grain or forage crops, including native and introduced grasses, and foods and crops produced for processing. Soils in this group have very severe limitations and hazards that affect use and management.¹⁴
24. Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.¹⁵
25. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁶

Findings of Fact & Conclusions of Law

26. David Vermeer stated at the hearing that the cropland in both agricultural parcels that are the subject of these appeals was irrigated with gravity irrigation. He also indicated that

⁹ Title 350, Chapter 14, §004.08E, Rev. 3/15/09.

¹⁰ Title 350, Chapter 14, §004.08F and §004.08F(1)-(3), Rev. 3/15/09.

¹¹ Title 350, Chapter 14, §004.08G(1), Rev. 3/15/09.

¹² Title 350, Chapter 14, §004.08G(2), Rev. 3/15/09.

¹³ Title 350, Chapter 14, §004.08G(3), Rev. 3/15/09.

¹⁴ Title 350, Chapter 14, §004.08G(4), Rev. 3/15/09.

¹⁵ Neb. Rev. Stat. §77-201(2) (Reissue 2018)

¹⁶ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

the 80 acre parcel had a water well, but that the 76.89 acre parcel had no well, yet received water from the well on the 80 acre parcel via pumping the water under the county road.

27. The acres receiving gravity irrigation are considered irrigated cropland. Under Nebraska law, irrigated cropland includes “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”¹⁷
28. In Case Nos. 17A 062 and 18A 016, there were 71.39 irrigated acres on the parcel. These acres were classified by the County Assessor as follows:

LCG	No. of acres	% of irrigated acres of the parcel
1A1	38.66	54%
1A	7.49	10%
2A1	16.17	23%
2A	9.06	13%
4A	.01	<1%

29. In Case Nos. 17A 063 and 18A 015, there were 70.97 irrigated acres on the parcel. These acres were classified as follows:

LCG	No. of acres	% of irrigated acres of the parcel
1A1	70.69	99%
1A	.03	<1%
4A	.25	<1%

30. The County Assessor also informed the Commission that for each agricultural parcel in Johnson County, each acre was valued uniformly by LCG classification each tax year.
31. The Taxpayer offered an appraisal report prepared by Jan Moore (the Appraiser). The Appraisal Report was prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP). When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹⁸

¹⁷ Title 350, Chapter 14, §002.21B, Rev. 3/15/09.

¹⁸ *JQH La Vista Conference Center Development LLC v. Sarpy County Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

32. After considering each of three methods of determining value, the Appraiser concluded that the market value of the Subject Properties were as follows:

Case No.	Appraised Market Value
17A 062	\$576,000
18A 016	\$576,000
17A 063	\$734,000
18A 015	\$734,000

33. The Taxpayer argued that the assessed value of each parcel should be based upon 70% of the market value as determined by the Appraiser.

34. Agricultural land and horticultural land in Johnson County was assessed at 70% of market value for tax year 2017, and at 72% of market value for tax year 2018.¹⁹

35. If the Commission were persuaded by the opinions of value given by the Appraiser, the following values would be appropriate:

Case No.	Proposed Assessed Value
17A 062	\$414,720 ²⁰
18A 016	\$403,200 ²¹
17A 063	\$570,200 ²²
18A 015	\$558,500 ²³

36. In her appraisal, the Appraiser found five “feasible comparable sales.” Two of the comparable sales had no irrigated acres. One sale had irrigation, but had no 1A1 or 1A acres. One sale had no 1A1 acres and less than 1% of its irrigated acres were 1A. And one sale had no 1A1 irrigated acres and 13% of its irrigated acres were 1A. Because these sales had very little comparability to either parcel of the Subject Property, in which the total of 1A1 and 1A irrigated acres constituted 64% and 99% respectively of the total acres of the parcels, we find that none of these five sales are comparable to the Subject Properties for equalization purposes.

37. Because an appraisal prepared according USPAP was provided, the Taxpayer has produced competent evidence to rebut the presumption in favor of the correctness of the decision of the County Board.

38. However, because the Commission finds that the appraisal opinion was based upon sales that were not comparable to the Subject Property, 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.

¹⁹ Reports & Opinions of the Property Tax Administrator [cites], 2017, Exhibit 49, page 16. 2018, Exhibit 49, page 17. The statutory requirement is that agricultural land and horticultural land be assessed at 75% of market value. See, Neb. Rev. Stat. §77-201(2).

²⁰ \$576,000 x .72 = \$414,720.

²¹ \$576,000 x .70 = \$403,200.

²² (\$585,000 x .72) + \$149,000 = \$570,200.

²³ (\$585,000 x .70) + \$149,000 = \$558,500.

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.
2. The taxable value of the Subject Property in Case Nos. 17A 0062 and 18A 0016 is \$517,217.
3. The taxable value of the Subject Property in Case No. 17A 0063 is:

Land	\$569,827
<u>Improvements</u>	<u>\$134,748</u>
Total	\$704,575

4. The taxable value of the Subject Property in Case No. 18A 0015 is:

Land	\$569,827
<u>Improvements</u>	<u>\$132,957</u>
Total	\$702,784

5. This Decision and Order, if no further action is taken, shall be certified to the Johnson County Treasurer and the Johnson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2017 and 2018.
9. This Decision and Order is effective on October 23, 2019.

Signed and Sealed: October 23, 2019

Robert W. Hotz, Commissioner