

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

Louis and Carol L. Moser, Jr.,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 18A 0223

Decision and Order  
Affirming the Determination of the  
Lancaster County Board of Equalization

Background

1. The Subject Property is a 77.73 acre unimproved agricultural parcel, with a legal description of S1, T7, R5, 6th Principal Meridian, N1/2 SW1/4 and parcel ID 01-01-300-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$282,100 for tax year 2018.
3. The Taxpayer protested this value to the Lancaster County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$282,100 for tax year 2018.
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 April 5, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. David Solheim appeared on behalf of Louis Moser and Carol L. Moser, Jr. (the Taxpayer).
8. Mary Moser was present at the hearing for the Taxpayer.
9. Tim Sealock and Derrick Niederklein were present at the hearing for the County Board.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission’s review of a 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) (Supp. 2020).

<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, 759 N.W.2d 464, 473 (2009).

12. 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>
13. 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>
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
15. A taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.<sup>7</sup>
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

17. The County Assessor assessed the value of the Subject Property based upon soil types and land capability groups (LCG).<sup>9</sup>
18. Each acre was assessed per LCG consistent with the assessment of the same LCGs with other properties in Lancaster County.
19. Agricultural land in Lancaster County received special valuation because of non-agricultural influences on the value of the land. To determine special valuation, the County Assessor utilized sales of parcels greater than 70 acres in Lancaster County deemed to be uninfluenced by non-agricultural influences and uninfluenced sales from Gage, Johnson, Cass, Otoe, Saunders, Richardson, Pawnee, and Saline counties.
20. The Taxpayer provided an appraisal report prepared by George Tesar, Jr. from Appraisal One. The report had an effective date of August 3, 2018, and gave an estimated market value of \$356,000 using a sales comparison approach.

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

<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. County 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> 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. 350 Neb. Admin. Code, ch. 14, § 004.08E.

21. Tesar primarily relied upon five dryland<sup>10</sup> sales. Two of the sales were from Lancaster County, two were from Saline County, and one was from Gage County. Each sold parcel had no grassland acres<sup>11</sup> included in the sale. Tesar also categorized the dryland acres into classes, effectively combining multiple LCGs.<sup>12</sup> Property record files were not provided for any of the sold parcels.
22. Tesar’s approach provided an estimate of the sale price per “tillable acre,” but it did not account for production capability within each LCG or between LCGs. By grouping all tillable acres together to determine a sale price per tillable acre, the approach did not account for the significant differences in production capability between soil types and LCGs. For example, depending upon the soil type and LCG, the 64.77 dryland acres of the Subject Property ranged in assessed value from \$3,375 to \$5,344.
23. 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.
24. 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.

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is \$282,100.
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 2018.
7. This Decision and Order is effective on August 24, 2021.

Signed and Sealed: August 24, 2021

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Robert W. Hotz, Commissioner

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<sup>10</sup> Tesar refers to dryland acres as “tillable” acres.

<sup>11</sup> Tesar refers to grassland acres as “pasture” acres.

<sup>12</sup> Tesar combines multiple LCGs into each class. Class 1 would effectively be the same as LCG1.