

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

THOMAS M. PLACZEK,
APPELLANT,

CASE NOS: 19A 0001 &
19A 0002

V.

PLATTE COUNTY BOARD OF
EQUALIZATION,

DECISION AND ORDER
REVERSING THE DECISIONS
OF THE PLATTE COUNTY
BOARD OF EQUALIZATION

AND

THOMAS A. TREMEL,
APPELLEES.

For the Appellant:

Burke J. Harr,
Houghton Bradford Whitted PC, LLO

For the Appellee Platte County Board of Equalization:

Elizabeth Lay,
Deputy Platte County Attorney

For the Appellee Thomas A. Tremel:

Jason Mielak,
Fehring & Mielak, LLP

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property consists of two distinct agricultural parcels in Platte County, Nebraska. The parcel in Case No. 19A 0001 consists of

39.25 acres. The parcel in Case No. 19A 0002 consists of 44.83 acres. The legal description and Property Record File (PRF) of the Subject Properties are found at Exhibits 9 and 17.

II. PROCEDURAL HISTORY

The Platte County Assessor (the County Assessor) determined the assessed value of the Subject Property in Case No. 19A 0001 was \$288,745 for tax year 2019. Thomas A. Tremel (the Taxpayer) protested this assessment to the Platte County Board of Equalization (the County Board) and requested a taxable value of \$219,800. The County Board determined the taxable value of the Subject Property for tax year 2019 was \$219,800.¹

In Case No. 19A 0002, the County Assessor determined the assessed value of the Subject Property was \$306,265 for tax year 2019. The Taxpayer protested this assessment to the County Board and requested a taxable value of \$251,048. The County Board determined the taxable value of the Subject Property for tax year 2019 was \$251,050.²

The County Assessor appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Consolidated hearings were held by the Commission on October 20, 2021, and November 30, 2021.³ Prior to the hearing, the parties exchanged Exhibits 1 to 28 and submitted a Pre-Hearing Conference Report, as ordered by the Commission. At the hearing, Exhibits 1-29 were admitted into evidence⁴.

¹ Exhibit 1.

² Exhibit 2.

³ Appeals for Case Nos 20A 0003, 20A 0004, 20A 0005, 20A 0094, 20A 0095, 20A 0096, 21A 0031, and 21A 0032 were also heard.

⁴ The exhibits were received based on stipulation between the parties regarding these exhibits made on the record at the end of the presentation of evidence in Cases No. 20A 0003, 20A 0004, 20A 0005, 20A 0094, 20A 0095, and 20A 0096.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁵ 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.⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is

⁵ 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).

⁶ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

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

⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

overvalued.¹⁰ 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.¹¹

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.¹² 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.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

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

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the real property and an identification of the property rights valued.¹⁵

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.¹⁶ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.²¹ 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.²²

As applicable to tax year 2019 appeals:

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards,

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁷ *Omaha Country Club* at 180, 829.

¹⁸ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁹ See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²² Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.²³

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²⁴ 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.²⁵

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.²⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁷ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁸ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show

²³ Neb. Rev. Stat. § 77-1363 (Reissue 2018). The statute was amended by legislation in 2019, Neb. Laws LB 372, § 1, but those changes were made after the effective date of January 1, 2019.

²⁴ Neb. Rev. Stat. § 77-132 (Reissue 2018).

²⁵ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

²⁶ *Neb. Const.*, Art. VIII, § 1.

²⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

uniformity.²⁹ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.³⁰ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.³¹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³²

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

Thomas Placzek, the County Assessor, testified in support of his appeals. Placzek had served as the County Assessor for 11 years. He explained his assessment of the Subject Properties, which can be viewed in part in the Property Record Files (PRF).³³ The Subject Properties were located in Market Area 6³⁴ of Platte County and were assessed based upon 32 sales from that market area.³⁵ Placzek testified he reviewed the productivity of each sold parcel by analyzing the land capability groups (LCGs)³⁶ of each acre. He explained that soil

²⁹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁰ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³² *Id.* at 673, 94 N.W.2d at 50.

³³ The PRF for the parcel at issue in Case No. 19A 0001 is found starting at Exhibit 9:5. The PRF for the parcel at issue in Case No. 19A 0002 is found starting at Exhibit 17:5.

³⁴ Market area 6 is the area of Platte County North of the Loup River. See, 2019 Reports and Opinions of the Property Tax Administrator for Platte County page 31.

³⁵ Placzek used sales from the period October 1, 2015, to September 30, 2018, a time frame consistent with the study period prescribed by Title 350 Neb. Admin. Code. ch 17, §003.05C (7/17).

³⁶ Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification. 350 NAC, Chapter 14, § 002.41 Rev. 3/15/09.

classifications were first done by the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) and provided to the Property Assessment Division (PAD) of the Nebraska Department of Revenue, who determined which soil types should be classified under each LCG.

Placzek also testified as to his knowledge of the County Board's determinations of value for the Subject Properties. He stated multiple motions were considered by the County Board and the discussion focused upon a single sale, the March 1, 2019, sale which included the Subject Property combined with several other parcels in the same sale. In addition, Placzek emphasized that the single sale involved multiple soil types that are not present on the Subject Properties. Since the sale involved multiple parcels and had soils not present on the Subject Property, Placzek opined that the per acre price of the sale was not indicative of the values per acre of the Subject Properties and that, as a result, the County Board determinations of value for the Subject Properties created a lack of equalization in Market Area 6.

Douglas Stejskal was called to testify by the County Board. Stejskal was a Certified General appraiser with 40 years' experience appraising agricultural properties. He conducted an appraisal at the request of Pinnacle Bank with an effective date of December 24, 2018.³⁷ Stejskal testified and certified that his appraisal was completed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).³⁸

Stejskal's appraisal was not an appraisal of the Subject Property but rather was an appraisal of 148 acres that encompassed the 84.08 acres of the Subject Properties but also included an additional 63.92 acres and other improvements. His opinion of market value of the entire 148 acres and improvements was \$640,100.³⁹ In his report, he combined the value of improvements on the 148 acres with the market

³⁷ Exhibit 28.

³⁸ See, Exhibit 28:21.

³⁹ Exhibit 28:4, Exhibit 28:38.

value of the land. He then determined the market value of the agricultural land of the 148 acres by dividing the total value by the number of acres to reach an opinion that the market value of the agricultural land was \$4,325 per acre. Stejskal further testified that his opinion of value was weighted 40% on a sales comparison approach, 20% on an income approach, and 40% on a cost approach. He stated that the Subject Properties were very unusual and very difficult to value.

Thomas Tremel, the owner of both Subject Properties, was also called to testify by the County Board. He confirmed that the March 1, 2019, sale combining the Subject Properties and other acres and improvements involved the entire 148 acres and a sale price of \$600,000. Tremel stated that after that sale he sold the grass acres and the improvements and retained the irrigated cropland and dry cropland. Tremel asserted that both sales supported the County Board determinations of value. Information regarding the date of the sale of the grass acres and improvements, the sale price, or other terms of that sale were not presented. Tremel testified he believed he resold the grass acres for approximately 175% of what he had paid for them within three weeks of the March 1, 2019, sale.

Robert Lloyd was also called to testify by the County Board. Lloyd was one of the Commissioners on the County Board at the time of the 2019 County Board determinations. He testified he had been a farmer for 50 years and had been on the County Board for 23 years. He said that he farmed the Subject Properties from 1972 to 1976 and that he disagrees with the NRCS soil typing data and the County Assessor's market area designations. He asserted that the Subject Properties were "all sand" and that they should not have been included in Market Area 6. Lloyd further testified that the per acre value of the Subject Properties should have been based upon the per acre price of the March 1, 2019, sale.

The County Board also called Jerry Engdahl, the County Board Chairman, to testify. Engdahl testified he had 15 years' experience as

a licensed realtor and had served on the County Board for nine years. Like Lloyd, Engdahl stated he also disagreed with the County Assessor's market area designations. Based upon his experience as a realtor and his conviction that the Subject Properties should not have been included in Market Area 6, Engdahl testified he also believed the best indicator of value for the Subject Properties was the per acre March 1, 2019, sale price.

B. Analysis

Stejskal's appraisal certified it was completed in compliance with USPAP. However, it was not an appraisal of the Subject Properties, and we disagree with its basic methodology of reaching a conclusion of value of agricultural land by combining the value of the land and the improvements and then dividing by the number of acres. The opinion of market value per acre was \$4,325. Such a determination of the per acre market value of the land is problematic for at least two reasons. First, without first extracting the improvement value before making a per acre calculation, the land value is skewed by the improvement value.⁴⁰ Second, when the 148 acres of agricultural land, consisting of grassland, dryland, irrigated land, roads, and shelterbelt are combined to reach a per acre value of all of those acres, such an approach ignores the significantly different values of the different uses of the land and does not account for the productivity of the soil types of those acres. We also find the opinion regarding the per acre value of the 148 acres is partially based upon at least 63.92 acres about which very little evidence was offered in this appeal.⁴¹ We therefore find that Stejskal's opinion of the market value per acre of the agricultural land is not an

⁴⁰ In his cost approach, Stejskal determined the improvement value to be \$32,500. Exhibit 28:37.

⁴¹ The Appraisal found in Exhibit 28 indicates that it was determining a value of 148 acres that were previously part of two different parcels that encompassed 232.2 acres, and it is unclear which uses and soil types are included in the appraised value.

accurate indicator to determine the actual value of the 84.08 agricultural acres of the Subject Properties.

Tremel testified he sold the grass acres and improvements that were part of the March 1, 2019, sale but he offered no information regarding that sale, other than that he believed it was for a significantly higher value than the March 1, 2019, sale.

It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.⁴²

For example, grass acres typically have a lower per acre value than dryland acres or irrigated acres, which would indicate that Tremel kept the more valuable portions of the March 1, 2019, sale and sold off the less valuable acres. This makes the use of the per acre sales price of the March 1, 2019, sale less than persuasive to determine the value of the Subject Property without additional information including other market information.

Two County Board members testified to their belief that the County Board had set the taxable value of the Subject Properties based upon the single sale of 148 acres and improvements on March 1, 2019, that included the same 84.08 acres of the Subject Properties that were the subject of the Stejskal Appraisal discussed above. The sale price for the 148 acres involving multiple parcels was \$600,000.⁴³

In Case No. 19A 0001, after removing the market value of the improvements involved in the sale, \$2,730,⁴⁴ the County Board

⁴² *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

⁴³ Exhibit 28:9.

⁴⁴ Exhibit 1.

determined the agricultural land had a taxable value of \$217,070.⁴⁵ In Case No. 19A 0002, the County Board determined the taxable value of the agricultural land to be \$251,050.⁴⁶

The County Board's methodology to determine the actual value of the agricultural acres of the Subject Properties is problematic for one of the same reasons as discussed above about the Stejskal appraisal. According to both Lloyd and Engdahl, the per acre value for each of the 84.08 acres of the Subject Properties was based upon the sale price of the 148 acres, regardless of the use of the acres or the productivity of the soil types as used. In fact, Lloyd was critical of the NRCS soil typing information, and Engdahl said, "I could care less," about the soil types.⁴⁷ Both Lloyd and Engdahl also expressed disagreements with the market area determinations made by the County Assessor and that they believed the Subject Properties should not have been included in Market Area 6.⁴⁸ As was the case with the Stejskal Appraisal, the County Board approach ignored the significantly different values of each of the uses of the land (i.e. grass versus irrigated) and did not account for the productivity of the soil types of those acres. Both County Board members testified that the main basis for their determination was the price the Taxpayer stated he had paid for the "crop land" acres. As was also the case with the Stejskal appraisal, the determination regarding the per acre sales price calculation of the 148 acres was based upon at least 63.92 acres about which very little evidence was offered in this appeal. We therefore find that the County

⁴⁵ *Id.*

⁴⁶ Exhibit 2.

⁴⁷ These opinions are in conflict with the statutory requirements that, "[c]lasses shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator." Neb. Rev. Stat. § 77-1363 (Reissue 2018).

⁴⁸ "Market Area is an area with defined characteristics within which similar properties are effectively competitive in the minds of buyers and sellers with other comparable property in the area." 350 NAC, Chapter 14, § 002.47.

Board determinations of the actual value of the 84.08 agricultural acres of the Subject Properties was unreasonable.

We find that none of the reasons given by the County Board members who testified and none of the evidence regarding the reasoning of the County Board was consistent with generally accepted appraisal principles. On the contrary, the County Assessor's methodology for assessing the taxable value of the Subject Properties was consistent with mass appraisal principles and conformed to Nebraska law. Therefore, we find that the County Assessor's values are clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable.

VI. CONCLUSIONS OF LAW

The Commission finds that there is 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 clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Platte County Board of Equalization determining the value of the Subject Property for tax year 2019 is vacated and reversed.
2. The taxable value of the Subject Property in Case No. 19A 0001 for tax year 2019 is **\$288,745**.
3. The taxable value of the Subject Property in Case No. 19A 0002 for tax year 2019 is **\$306,265**.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Platte County Treasurer and the Platte County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2019.
8. This Decision and Order is effective for purposes of appeal on June 5, 2024.⁴⁹

Signed and Sealed: June 5, 2024

SEAL



Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁴⁹ 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.