

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas M. Placzek,
Appellant,

v.

Platte County Board of Equalization,
Appellee, and

Wrangler Enterprises LLC,
Appellee.

Case No. 19A 0003

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

For Thomas M. Placzek:
Burke J. Harr,
Houghton Bradford Whitted, PC, LLO

For the County Board of Equalization:
Elizabeth Lay,
Jalecki Lay & Sharp, PC, LLO

For Wrangler Enterprises:
No Appearance

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

I. THE SUBJECT PROPERTY

The Subject Property is a 6.9 acre agricultural parcel located in Platte County, Nebraska. The legal description and property record card for the Subject Property are found at Exhibit 2:7-12.

II. PROCEDURAL HISTORY

The Platte County Assessor determined the assessed value of the Subject Property was \$50,340 for tax year 2019.¹ Wrangler Enterprises LLC (Wrangler) protested this assessment to the Platte County Board of Equalization (the County Board) and requested an assessed valuation

¹ Exhibit 1:1, Exhibit 2:8.

of \$32,000.² The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$37,280.³

Thomas M. Placzek, in his official capacity as Platte County Assessor, appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 22, 2021, with Commissioner Hotz presiding. The parties stipulated to the admission of Exhibit 1, Exhibit 2 pages 7-13, and Exhibits 3 through 5.

III. STANDARD OF REVIEW

The Commission's review of a determination of a county board of equalization is de novo.⁴ There is a presumption 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.⁵ 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.⁶ The burden of persuasion imposed on the complaining party is not met by showing a mere difference of opinion.

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A county assessor has the authority to appeal a decision by a county board to TERC in a variety of situations as described in Neb. Rev. Stat. § 77-5007.⁹ The Commission may determine

² Exhibit 1:1.

³ Exhibit 1:1. Exhibit 2:8.

⁴ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Board of Equalization*, 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 Board*, 276 Neb. 1009, 1019 (2009).

⁵ *Brenner* at 283-284, 811-812.

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Board of Equalization*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ *Phelps County Board of Equalization v. Graf*, 258 Neb. 810, 814, 606 N.W.2d 736, 740 (2000).

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.¹⁰ 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.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

IV. APPLICABLE LAW

A. Valuation

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 the real property and an identification of the property rights valued.¹³

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.¹⁴ Actual value, market value, and fair market value mean exactly the same thing.¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Omaha Country Club* at 180, 829.

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. § 77-1301(1) (2020 Cum. Supp.).

valued at actual value for purposes of taxation.¹⁸ Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.¹⁹

B. Equalization

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.²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.²³ 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 uniformity.²⁴

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.²⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ 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.²⁷ There must be something more,

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²⁰ *Neb. Const.*, Art. VIII, § 1.

²¹ *MAPCO Ammonia Pipeline v. State Board of Equalization*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *MAPCO; Cabela's Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²³ *Cabela's Inc.*

²⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *Equitable Life v. Lincoln County Board of Equalization*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Board of Equalization*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

C. Agricultural Land and Horticultural Land

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.²⁹ Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.³⁰

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.³¹

V. FINDINGS OF FACT

The Subject Property is a 6.9 acre tract of dryland cropland. It is bordered on the north by Highway 22, on the east by a commercial parcel, on the south by railroad tracks, and on the west by another agricultural parcel with a different owner.

As of the assessment date, January 1, 2019, the Subject Property was part of a 71.23 acre parcel which was assessed at \$384,850 (the Original Parcel). Wrangler purchased a 6.9 acre portion of the Original Parcel in March 2019 for \$32,000 and the remainder of the Original Parcel was bought by an unrelated party, Thomas Tremel.³² After the sale, the County Assessor divided the Original Parcel into smaller parcels including the 6.9 acre Subject Property.

²⁸ *Id.* at 673, 94 N.W.2d at 50.

²⁹ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

³⁰ Neb. Rev. Stat. § 77-132 (Reissue 2018).

³¹ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

³² The taxable value of the portion bought by Tremel is the subject of several pending appeals and cross-appeals for tax years 2019 and 2020. The findings in this decision are derived from the evidence from this appeal, and they will not be deemed relevant to any other appeal.

Platte County contains two market areas for agricultural land: Market Area 6, which includes all the land lying north of the Loup River, and Market Area 3, which includes all land lying south of the Loup River and north of the Platte River (the southern border of Platte County).³³ The Subject Property is north of the Loup River and is located in Market Area 6.

Thomas A. Placzek testified at the hearing. Placzek is the Platte County Assessor, responsible for the assessment of all land in Platte County. He utilizes mass appraisal to assess land in Platte County using agricultural land sales throughout the county to determine the market value of the land. For 2019, this involved sales that occurred between October 1, 2015 through September 30, 2018.³⁴ For tax year 2019, the overall class of agricultural land and horticultural land in Platte County was assessed at 72% of actual value and the Property Tax Administrator determined that the quality of assessment met generally accepted mass appraisal techniques.³⁵

Agricultural parcels usually contain multiple soil types. The soil types are determined by the Natural Resources Conservation Service, United States Department of Agriculture (NRCS). Soil types are then assigned to Land Capability Groups (LCGs) based on productivity.³⁶ The Subject Property consists of 6.870 acres of 1D1 (high to very high yields) and 0.030 acres of 2D (moderately high to above average yields).³⁷ Based on 32 sales of agricultural land within Market Area 6, Placzek determined that the assessed value of 1D1 acres should be \$7,300 per acre and assessed value of 2D acres should be \$6,250 per acre. These values were applied to all 1D1 and 2D acres in Market Area 6 for 2019. Using these per acre values, Placzek determined that the assessed value of the Subject Property should be \$50,340 for tax year 2019. His opinion of value was unchanged as of the hearing date.

Placzek attended the County Board's hearing on Wrangler's protest of the assessed value and reviewed its decision. Placzek testified that the County Board treated the Subject Property

³³ See Exhibit 3:12.

³⁴ The Reports and Opinions developed annually by the Property Tax Administrator are derived from study periods specified by regulation. The study period for agricultural and horticultural land includes sales for a three-year period between October 1 and September 30, which ends the year prior to the assessment year for which values are established. 350 Neb. Admin. Code Ch. 17 § 003.05 *et seq.* (2017).

³⁵ Testimony of Placzek, *2019 Reports and Opinions of the Property Tax Administrator*, Platte County, p.18. The Commission may consider and utilize the Reports and Opinions of the Property Tax Administrator during the course of any hearing or as part of its decision making process. 442 Neb. Admin. Code Ch. 5 § 031.02 (2011).

³⁶ See 350 Neb. Admin. Code Ch. 14 § 004.08 for the Department of Revenue's regulations related to classification of agricultural land for assessment purposes.

³⁷ Exhibit 2:10.

differently than other properties in Platte County. It did not use the 32 sales used by Placzek to determine the value of the Subject Property. Instead, the County Board relied on the sale of the Subject Property in 2019, which was outside the three-year window used by Placzek. In Placzek's opinion, the County Board did not use mass appraisal or any accepted appraisal principles to determine the value of the Subject Property. Instead, the County Board set the value of the Subject Property at \$5,403 per acre, a total of \$37,280.³⁸

Douglas L. Stejskal, a certified real property appraiser, testified on behalf of the County Board. Stejskal's testimony established that he had performed an appraisal of some property near the Subject Property, but he did not appraise the Subject Property itself or give an opinion of its value. Therefore, we gave the information contained in his testimony and report little weight in evaluating this appeal.

Jerry Engdahl testified on behalf of the County Board. Engdahl is a member of the County Board and has served in that capacity for nine years. He was the chairman of both the Board of Equalization and Platte County Board of Supervisors at the time of Wrangler's 2019 protest.³⁹ Engdahl has also been a realtor for fourteen years; he sells recreational, agricultural, and commercial property in and around Platte County.

Engdahl considered the attributes of the Subject Property in evaluating Wrangler's protest. The parcel itself is small, making it difficult to get large equipment there, and the parcel is "landlocked" in the sense that, although it abuts a highway across its entire north edge, no driveway or roadway runs from the highway onto the Subject Property. Engdahl testified that the County Board considered the sale of the Subject Property and other sales in the area when setting the value of the Subject Property. The County Board also determined that the Subject Property and other nearby property sold for approximately \$6,000 per acre but were assessed at \$12,000 per acre.⁴⁰ Engdahl described the process of setting the taxable value of the Subject Property as a compromise between board members, resulting from three motions in favor of different amounts.

³⁸ \$5,403 x 6.9 acres = \$37,281.

³⁹ The two entities are composed of the same people but have different functions. See Neb. Rev. Stat. § 77-1501.

⁴⁰ Both Engdahl and fellow board member Robert Lloyd testified about their concern with assessments at \$12,000 per acre, but the record does not contain any examples of assessments at amounts that high.

He was unable to explain how the County Board settled on \$5,403 per acre as the taxable value of the Subject Property.

Robert Lloyd also testified on behalf of the county board. He has been a member of that body for 23 years. Outside of his work with the County Board, he is a farmer. He currently farms land in the area of the Subject Property, and he farmed the Subject Property itself between 1972 and 1976. He is not a certified appraiser and has no training in valuing property.

In setting the value of the Subject Property, Lloyd considered that the property had not been sold after approximately nine years on the market, during which time it was advertised throughout the state. Lloyd considered purchasing the Subject Property at some point during that time and inquired about the price. He was informed that the starting bid for the Subject Property was \$9,000 per acre but he believed that price was too high. Lloyd also took into consideration his experience farming the Subject Property and his knowledge of the March 2019 sale of the Subject Property when considering its assessed value. He was aware that farm equipment could not access the property from the south across the railroad tracks, and he knew that other landowners a quarter mile from the Subject Property had been denied a permit to create a driveway opening onto the highway. Lloyd also believed, based on his experience farming in the region, that soils in the northern part of the county are superior to soils in the southern part, and he believes that this is true regardless of soil type and LCG. He was also of the opinion that soils in the area of the Subject Property are no more than three feet deep before hitting sand, which negatively impacts productivity. Like Engdahl, Lloyd did not recall precisely how the County Board set the value of the Subject Property at \$5,403 per acre, except that it was a compromise among board members.

VI. ANALYSIS

We begin with a presumption that the County Board faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁴¹

Notably, neither Engdahl nor Lloyd was able to explain how the County Board chose the exact figure of \$5,403 per acre for the taxable value of the Subject Property. We observe that the

⁴¹ *Brenner* at 283-284, 811-812.

Original Parcel was 71.23 acres, was assessed at \$384,850, which is \$5,403 per acre. Thus, it appears that the County Board set the value of the Subject Property based on the assessed value of the Original Parcel, proportioned by acre.

Agricultural parcels normally contain multiple soil types of different production capabilities. Some acres are more productive, and therefore more valuable, than others. Nearly all the Subject Property's soil falls into the 1D1 LCG, which is the most productive category of dryland cropland. There is no reason to believe that the Original Parcel was composed almost entirely of 1D1 quality soil. For this reason, simply dividing the prior assessed value by the number of acres is not an effective assessment method. It is not a method identified in Neb. Rev. Stat. § 77-112, and there is no evidence that it is a professionally accepted mass appraisal method.

We acknowledge that the County Board members had specific, legitimate reasons for believing that the assessed value of the Subject Property was too high: the 2019 sale, the lack of road access, the small size of the parcel, and more. But the County Board's method for setting the value of the Subject Property did not quantify the impact of these conditions on market value and adjust accordingly. Instead, it proportioned the assessed value of the Original Parcel, which did not account for the 2019 sale or any of the other factors listed by the County Board members in their testimony. For these reasons, we find that the presumption in favor of the County Board's determination has been rebutted.

Once the presumption is rebutted, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented.⁴² The County Board's decision shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁴³

The method used by the County Assessor to determine the assessed value of the Subject Property is the method specified by Nebraska law.⁴⁴ The soil types and LCGs are assessed uniformly and proportionately with the same soil types and LCGs throughout the market area of the Subject Property: \$7,300 per acre for 1D1 and \$6,250 per acre for 2D. These per acre

⁴² *Id.*

⁴³ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁴⁴ See 350 Neb. Admin. Code Ch. 14.

assessed values were determined based on 32 sales in the market area of the Subject Property. This methodology resulted in an assessed value of \$50,340 for the Subject Property. We find that the evidence shows that the value set by the County Board is unreasonable or arbitrary, and the correct taxable value for the Subject Property for tax year 2019 is \$50,340.

VII. CONCLUSION

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

VIII. 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 assessed value of the Subject Property for tax year 2019 is **\$50,340**.
3. 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).
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 2019.

7. This Decision and Order is effective for purposes of appeal on April 26, 2021.⁴⁵

Signed and Sealed: April 26, 2021

SEAL

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁴⁵ 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.