

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

THOMAS M. PLACZEK,
APPELLANT,

CASE NOS: 20A 0003,
20A 0004, & 20A 0005

V.

PLATTE COUNTY BOARD OF
EQUALIZATION,

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

AND

THOMAS A. TREMEL,
APPELLEES.

THOMAS A. TREMEL
APPELLANT,

CASE NOS: 20A 0094,
20A 0095, & 20A 0096

V.

PLATTE COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

For the Appellant Thomas Placzek:

Burke J. Harr,
Houghton Bradford Whitted PC, LLO

For the Appellant and Appellee Thomas A. Tremel:

Jason Mielak,
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For the Appellee Platte County Board of Equalization:

Elizabeth Lay,
Deputy Platte County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle on October 20, 2021, and November 30, 2021. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property consists of three distinct agricultural land parcels located in Platte County, Nebraska. The legal description and Property Record File (PRF) for each of the Subject Properties is found at Exhibits 10-14, and 17.

II. PROCEDURAL HISTORY

The chart below shows the Case Nos., the assessed values as determined by the Platte County Assessor (the Assessor), the assessments requested by Thomas Tremel (the Taxpayer) at the time of the tax year 2020 protest, and the taxable values as determined by the Platte County Board of Equalization (the County Board) after a protest hearing for each of the six appeals in this consolidated proceeding.

Case No.	Assessed Value	Taxpayer Request	County Board Value
20A 0003 20A 0096	\$319,360	\$170,908	\$219,800 ¹
20A 0004 20A 0095	\$302,685	\$146,292	\$288,500 ²
20A 0005 20A 0094	\$340,875	\$196,355	\$251,050 ³

The Taxpayer appealed the protest decisions of the County Board to the Tax Equalization and Review Commission (the Commission).⁴ The Platte County Assessor, Thomas Placzek, also appealed the decisions of the County Board.⁵ Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. At the hearing, Exhibits 1-29 were admitted into evidence.

III. STANDARD OF REVIEW

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

¹ Exhibits 3, 8.

² Exhibits 4, 7.

³ Exhibits 5, 6.

⁴ See Case Nos. 20A 0094, 20A 0095, & 20A 0096.

⁵ See Case Nos. 20A 0003, 20A 0004, & 20A 0005.

⁶ 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).

assessment and has acted upon sufficient competent evidence to justify its action.⁷

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.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.¹¹ 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.¹²

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

⁷ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

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

¹⁰ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

an appeal or cross appeal.¹³ 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.¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

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 the real property and an identification of the property rights valued.¹⁶

“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.”¹⁷ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁸ 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.¹⁹ All real property in

¹³ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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

¹⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁸ *Omaha Country Club* at 180, 829.

¹⁹ Neb. Rev. Stat. § 77-131 (Reissue 2018).

Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

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

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, 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. *Land capability groups²³ shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion.* County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed 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.²⁴

²⁰ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²² Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²³ 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. Title 350 Neb. Admin. Code, Chapter 14, Section 002.41, Revised 3/15/09 (emphasis added).

²⁴ Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020) (emphasis added).

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²⁵ 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.²⁶

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.²⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁸ 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.²⁹ 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.³⁰ 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.³¹ 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.³² There

²⁵ Neb. Rev. Stat. § 77-132 (Reissue 2018).

²⁶ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

²⁷ *Neb. Const.*, Art. VIII, § 1.

²⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁹ *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).

³⁰ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³¹ *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).

³² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³³

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

1. Testimony of Thomas Placzek

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). The Subject Properties were in Market Area 6³⁴ of Platte County and were assessed based upon 47 sales from that market area.³⁵ Placzek testified he reviewed the productivity of each sold parcel by analyzing the land capability groups (LCGs) of each acre. He explained that soil 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

³³ *Id.* at 673, 94 N.W.2d at 50.

³⁴ Market area 6 is the area of Platte County North of the Loup River. See, 2020 Reports and Opinions of the Property Tax Administrator for Platte County page 34.

³⁵ Placzek used sales from the period October 1, 2016, to September 30, 2019, a time frame consistent with the study period prescribed by Title 350 Neb. Admin. Code. ch 17, §003.05C (7/17).

sale.³⁶ In addition, Placzek emphasized 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.

Placzek stated the implementation of 2019 Neb. Laws, LB 372 affected valuations throughout the county as the LCG classifications of certain soil types changed based upon the use of the soils. In addition to the LCG changes required by LB 372, different sales data was applied for 2020 as newer sales were reported. Further, additional aerial measurements resulted in slight changes to the total area of the parcels.

2. Testimony of Ruth Sorensen

Sorensen was the Property Tax Administrator, overseeing the Property Assessment Division of the Nebraska Department of Revenue. Sorensen stated LB 372 affected 7,500 soils in Nebraska. She compiled soils and capabilities into LCGs for use in assessment. Sorensen stated, without explanation, changes to an LCG should not have affected the valuation of property.

Sorensen testified she had a discussion with the County Assessor on June 19, 2020, regarding agricultural parcels with valuation increases of more than \$10,000 when applying the LCG adjustments mandated by LB 372. Sorensen stated that this was unusual as the agricultural market across the state was “flat to declining.”³⁷ Sorensen recommended the County Assessor reduce grassland values for market areas 3 and 6 and perform spot adjustments for the three particular

³⁶ The Property Valuation Protest form for the Subject Property in Case No. 20A 0004 indicates that this parcel was purchased in June of 2019 for \$6,000 per acre, however no other exhibit or testimony was provided regarding the terms of that sale.

³⁷ See also, Exhibit 26:1.

soil types.³⁸ She testified she had suggested the ‘spot back’ to the previous year’s values as a means to make a temporary change for 2020 only, with the purpose of taxpayer relief for that tax year.

Sorensen testified that 63 counties in the state did not see significant increases in value due to the LCG reclassification required by LB 372 and six counties made adjustments. Thirteen counties did not initially make any adjustments, prompting Sorensen to send a letter similar to Exhibit 26 encouraging those counties to make the recommended adjustments. However, Sorensen admitted that at the time of the Statewide Equalization Proceedings for tax year 2020, the values set by Placzek were within the acceptable range for agricultural and horticultural land per Neb. Rev. Stat. § 77-5023(2).

Sorensen reiterated that in her opinion a change in the assigned LCG should not have caused a change in the value as LCGs were meant as an inventory management tool only, and that county assessors were instructed to that effect.

3. Testimony of Douglas Stejskal

Douglas Stejskal’s testimony was provided for the hearing regarding the 2019 valuations of the Subject Properties. The parties stipulated to receipt of that testimony for this proceeding. 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, 2018.³⁹ Stejskal testified and certified that his appraisal was completed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).⁴⁰

Stejskal’s appraisal was not an appraisal of the Subject Property but rather was an appraisal of 148 acres that encompassed the 84.08

³⁸ Exhibits 26:3 and 29.

³⁹ Exhibit 28.

⁴⁰ See, Exhibit 28:21.

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 \$640,100.⁴¹ In his report, he combined the value of improvements on the 148 acres with the market 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.

4. Testimony of Thomas Tremel

The receipt of testimony of Thomas Tremel, the owner of the Subject Properties, was also stipulated to by the parties based upon his prior testimony. 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 purchased them for within three weeks of the March 1, 2019, sale.

5. Testimony of Robert Lloyd

The receipt of testimony of Robert Lloyd was also stipulated to by the parties. Lloyd was one of the Commissioners on the County Board at the time of the 2019 County Board determinations. He testified he

⁴¹ Exhibit 28:4, Exhibit 28:38.

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.

6. Testimony of Jerry Engdahl

The receipt of testimony of Jerry Engdahl, the County Board Chairman, was also stipulated to by the parties. 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

The primary issue in these appeals is the County Assessor's assertion the Platte County Board of Equalization set values for the Subject Properties to the prior year's valuation which did not give full effect to legislation enacted in 2019, LB 372, to determine the taxable value of the Subject Properties for tax year 2020.⁴²

1. Agricultural Assessments Prior to Tax Year 2020

Some context is necessary to understand the effect of the enactment of LB 372. In 2019, the Nebraska Legislature amended Neb. Rev. Stat.

⁴² 2019 Neb. Laws, LB 372, was approved by the Governor on March 12, 2019, and was the applicable law at the time of the effective dates for tax year 2020 assessments.

§77-1363 by inserting one sentence: “Land capability groups shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion.”⁴³ Our decision in this appeal is primarily based on our understanding of the effect this language has on the taxable value of agricultural land and horticultural land starting in tax year 2020.

Under Nebraska law, agricultural land and horticultural land⁴⁴ is a distinct class of real property and is divided into multiple subclasses.⁴⁵ Irrigated cropland, dryland cropland, and grassland are the most predominant use subclasses of agricultural land.

To properly assess a parcel of agricultural land, county assessors analyze each acre of the parcel. Fundamental to this analysis is identifying soil types. The process of identifying and analyzing soil types, and their ultimate productivity when put into either irrigated cropland, dryland cropland, or grassland uses, starts with information from the United States Department Agriculture, Natural Resources Conservation Service (NRCS). The NRCS assigns each soil type with a four-digit code and provides the soil type codes to the Property Assessment Division (PAD) of the Nebraska Department of Revenue.⁴⁶ PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.⁴⁷ This soil conversion process conducted by PAD includes

⁴³ LB 372, §1, and italicized above as codified in Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020).

⁴⁴ Hereinafter referred to as “agricultural land.”

⁴⁵ Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

⁴⁶ An example of this can be seen in the third column of Exhibit 36, labeled “soil.”

⁴⁷ An LCG is defined as, “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.” Title 350 Neb. Admin. Code, Chapter 14, Section 004.08E, Revised 3/15/09.

multiple soil types in each of these LCG’s. As a result, the eight LCG’s for each agriculture subclass are as follows:

Irrigated	1A1	1A	2A1	2A	3A1	3A	4A1	4A
Dry	1D1	1D	2D1	2D	3D1	3D	4D1	4D
Grass	1G1	1G	2G1	2G	3G1	3G	4G1	4G

Soils that are used for irrigated cropland are included under the designation “A.” Soils used for dryland cropland are designated with a “D,” and soils used for grassland are designated as “G.” Soils deemed to be most productive are classified as 1A1, 1D1, and 1G1. Soils deemed to be least productive are classified as 4A, 4D, and 4G. All acres used for irrigated cropland, dryland cropland, and grassland are classified under one of these LCG’s.

PAD provides the soil classifications for each county to each county assessor. Each county assessor is then required to utilize the soil surveys as directed by the Property Tax Administrator (PTA) of PAD.⁴⁸

Prior to the enactment of LB 372, PAD classified each four-digit soil type it received from the NRCS in an LCG, based upon a dryland capability classification per Rules & Regulations.⁴⁹ For example, soil type 2288, when used as dryland cropland, was classified as LCG 2D, with a productivity level of 2.⁵⁰ PAD then relied upon the dryland cropland capability classification for soil type 2288 to also classify the irrigated cropland and the grassland at the productivity level of 2, 2A, and 2G, respectively. PAD directed assessors to use for each soil type

⁴⁸ Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020) (“County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator.”).

⁴⁹ “Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification.” Title 350 Neb. Admin. Code, Chapter 14, Section 002.41, Revised 3/15/09.

⁵⁰ See, Exhibit 11:6. We are using the term “productivity level” to identify the numeral within each LCG.

the same productivity level that was designated for dryland cropland for both irrigated cropland and grassland.⁵¹

2. Agricultural Assessments for Tax Year 2020

As a result of the enactment of LB 372, the classification of agricultural land as described above changed. Rather than designating the irrigated cropland and grassland productivity levels at the same level that those soil types had when used as dryland cropland, the productivity level for each soil type when used as irrigated cropland or as grassland was independent of the dryland cropland productivity level. For example, for tax year 2020, soil type 2288 when used as dryland cropland was designated as 2D1, when used as irrigated cropland was 2A1, but when used as grassland was 1G1. These are each shown in the “Dry,” “Irr,” and “Grass” columns of Exhibit 11:7. For tax year 2020, PAD directed the County Assessor to use these classifications for the assessment of agricultural land in Platte County.

3. Agricultural Assessments by the Platte County Assessor for Tax Year 2020

Tom Placzek, the Platte County Assessor, testified he had been directly involved in the assessment of the Subject Properties for both tax years 2019 and 2020. Placzek testified the reclassification of soil types and LCG’s from tax year 2019 to tax year 2020 was one factor in the change of values for many agricultural properties that were located in the same market area as the Subject Properties.⁵² He also testified two other factors had an effect on tax year 2020 values: the correction

⁵¹ See, Title 350 Neb. Admin. Code, Chapter 14, Section 002.41.

⁵² The Subject Properties were all located in market area 6, an area generally north of the Loup River. The County Assessor utilized two market areas to assess agricultural land in Platte County, market area 3 and market area 6. See, 2020 Reports & Opinions of the Property Tax Administrator, Exhibit 71, page 34, from the Statewide Equalization Proceedings for Tax year 2020.

of acre measurements by soil type, and the application of market information from sales. We take up each of these three factors in turn.

a. The County Assessor Correctly Applied Soil Type and LCG Classifications

Placzek testified that when determining the value per acre for each parcel for tax year 2020, he applied the soil classifications and LCG’s as provided to him by PAD in the form of a spreadsheet, as shown in Exhibit 19. The Commission notes approximately 80 different soil types were included in the spreadsheet. Per the PRF’s, the Subject Properties contained three of these soil types with at least one of the uses of irrigated cropland, dryland cropland, or grassland, where the 2020 productivity level was different from the 2019 productivity level.⁵³ These soil types, the “Previous” year (2019) classifications, and the “New” year (2020) classifications are shown in the chart below:

	Previous	Previous	Previous	New	New	New
Soil	Dryland	Irrigated	Grassland	Dryland	Irrigated	Grassland
1438	1D1	1A1	1G1	1D1	1A1	1G1
2288	2D	2A	2G	2D1	2A1	1G1
8425	4D	4A	4G	4D	4A	1G1

Based upon these soil types and LCG’s provided by PAD to the County Assessor, as shown in Exhibit 19, two of the three Subject Properties had at least one LCG reclassified from tax year 2019 to Tax year 2020.

Arrayed as applied to each Subject Property, the soil classification changes from 2019 to 2020 were as follows:

⁵³ See, Exhibits 10:6-7; 11:6-7; and 12:5-6.

Case No.	Soil Type	2019 LCG	2020 LCG	Exhibits
20A 0003	2288	2A	2A1	11:6-7
20A 0096	2288	2D	2D1	
	2288	2G	1G1	
20A 0005	2288	2A	2A1	12:5-6
20A 0094	2288	2D	2D1	
	8425	4G	1G1	

Thus, in the tax year 2020 assessments of the Subject Properties, the County Assessor utilized the soil types and LCG's provided by PAD, and correctly believed Neb. Rev. Stat. § 77-1363, as amended by LB 372, required it.

Therefore, we find that by using the soil type and LCG classifications as directed by PAD per Exhibit 19, the County Assessor's actions were consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended. As noted above, before tax year 2020, the regulation required that LCG's be based upon the dryland cropland capability classification,⁵⁴ while the statute was silent on the point. Once amended, however, the statute required the LCG classifications of irrigated cropland and grassland to no longer be based upon the dryland cropland classifications for tax year 2020.⁵⁵

As a matter of statutory interpretation, we find that while the regulation has the force and effect of statutory law,⁵⁶ the more recent statute conflicts with the requirements of the regulation on the same subject matter.⁵⁷ As such, the more recent statute controls.⁵⁸ After following this rule of statutory construction, we give the statutory

⁵⁴ Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification. Title 350 Neb. Admin. Code, Chapter 14, Section 002.41, Revised 3/15/09.

⁵⁵ "Land capability groups shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion." Neb. Rev. Stat. § 77-1363.

⁵⁶ "Agency regulations properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law." *Ash Grove Cement Co. v. Nebraska Dept. of Rev.*, 306 Neb. 947, 963, 947 N.W.2d 731, 743 (2020).

⁵⁷ *Bergan Mercy Health Sys. v. Haven*, 260 Neb. 846, 859-60, 620 N.W.2d 339, 349 (2000).

⁵⁸ See, *Mauler v. Pathfinder Irr. Dist.* 244 Neb. 217, 219, 505 N.W.2d 691, 693 (1993).

language its “plain and ordinary meaning”⁵⁹ and conclude that the methodology followed by the County Assessor was consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended.

b. The County Assessor Properly Applied Corrected Acre Measurements of Agricultural Land that Resulted in Changes from Tax Year 2019 to Tax Year 2020

Placzek also properly included corrected acre measurements in the tax year 2020 PRF’s. This was done with the parcels in Case Nos. 20A 0003/20A 0096,⁶⁰ and 20A 0005/20A 0094.⁶¹ Placzek testified these corrections were made in the normal course of assessment practices. He stated that such changes generally resulted from geographic information system (GIS) mapping. In each of the above cases, the acre counts for both irrigated cropland and dryland cropland changed by small amounts from tax year 2019 to tax year 2020.

We find that these assessment practices were reasonable. Neither the Taxpayer nor the County Board offered any persuasive evidence otherwise.

c. The County Assessor Properly Considered Market Data from Qualified Sales to Determine the Value Per Acre for Each LCG in Market Area 6

For tax year 2020, the County Assessor utilized agricultural sales in the three years prior to the effective date of January 1, 2020.⁶² For market area 6, there were 47 qualified sales.⁶³ The County

⁵⁹ *In re Adoption of Yasmin S.*, 308 Neb. 771, 774, 956 N.W.2d 704, 706 (2021).

⁶⁰ See, Exhibits 11:6 and 11:7

⁶¹ See, Exhibits 12:5 and 12:6.

⁶² For tax year 2020, the three-year period began October 1, 2016, and ended September 30, 2019. Title 350 Neb. Admin. Code, Chapter 17, Section 003.05C, Revised 07/05/2017.

⁶³ See, 2020 Reports & Opinions of the Property Tax Administrator, Platte County, pages 15-16, and 31-33, from the Statewide Equalization Proceedings for tax year 2020.

Assessor analyzed these sales to determine the values per acre for each LCG for each use, including irrigated cropland, dryland cropland, and grassland. The three-year period for market area 6 sales analyzed for tax year 2020 included 47 sales.⁶⁴

Sales from October 1, 2016, to September 30, 2019, were used for tax year 2020. As a result, the values per acre for tax year 2020 for each of the 8 LCG's in market area 6 for irrigated cropland, dryland cropland and grassland were not the same as they were for tax year 2019.⁶⁵

Placzek testified he applied the values per acre for each LCG consistently for all agricultural parcels in market area 6 including all of the Subject Properties. We find these assessment practices were reasonable. Neither the Taxpayer nor the County Board offered any persuasive evidence otherwise.

4. Actions Taken by the County Board and by PAD that Appeared to Improperly Affect the Protest and Appeal Process

Placzek testified that after PAD provided him with LCG's, after he had provided notices of assessed values to the Taxpayer for tax year 2020, and after the Taxpayer had filed protests for each property, all as described above, PAD provided Placzek with valuation options for some of the LCG's that had been affected by the requirements of LB 372.⁶⁶ Among the options outlined was a suggestion on June 29, 2020, that "dryland and irrigated LCGs with a significant value change"

⁶⁴ For tax year 2020, the three-year period began October 1, 2016, and ended September 30, 2019. See, Title 350 Neb. Admin. Code, Chapter 17, Section 003.05C, Revised 07/05/2017. See also, 2020 Reports & Opinions of the Property Tax Administrator, Platte County, pages 15-17, and 31-32, from the Statewide Equalization Proceedings for tax year 2020.

⁶⁵ See, 2020 Reports & Opinions of the Property Tax Administrator, Platte County, page 33, from the Statewide Equalization Proceedings for tax year 2020; and see, 2019 Reports & Opinions of the Property Tax Administrator, Platte County, page 29, from the Statewide Equalization Proceedings for tax year 2019.

⁶⁶ Exhibit 26:3 includes a copy of a June 29, 2020, email from PAD's Field Operations Manager, Sarah Scott, to Placzek outlining per acre valuation options and suggestions. It is important to note that this communication was made more than one year after the Governor approved LB 372.

could be “spotted back to the prior year classification.”⁶⁷ This included soil types 6754, 6812, and 8476 for Platte County.

It is noteworthy to this discussion, and Placzek emphasized the point in his testimony as noted above, none of the Taxpayer’s Subject Properties contained any acres of any of these three soil types. In other words, even had Placzek followed the suggestions made by PAD on June 29, 2020, that specific classifications be “spotted back” to the prior year’s classification, that alone would have had no effect on the tax year 2020 assessed values of the Subject Properties. Placzek testified that he interpreted the June 29, 2020, communication, and a meeting with PAD that preceded it, as a suggestion that he should not follow the requirements of LB 372 because by doing so some parcels would have increases in their overall assessments.

During the same time period, PAD made similar communications to the County Board. Prior to the County Board making its protest decisions of July 13, 2020, in a letter to County Board Chairperson Engdahl, dated July 9, 2020, the PTA, Ruth Sorensen, summarized the process PAD followed after the codification of LB 372. She stated, “County Assessors were encouraged to adjust the valuation structures prior to March 19, 2020, to avoid increases to agricultural land because the current market for the majority of the state is flat to declining.”⁶⁸ As explained above, Placzek testified that he refused to make adjustments to the LCGs that were originally provided to him by PAD. In response to Placzek’s actions, Sorensen’s July 9, 2020, letter concluded, “This is unfortunate, as affected agricultural landowners will bear a disproportionate tax burden without corrective action.”⁶⁹

Placzek testified he disagreed with the corrective actions advocated by the PTA because he believed he was being discouraged from following the requirements of LB 372. Specifically, he stated he refused to assess any of his agricultural market areas in his county using the majority of the state as being “flat to declining” as a basis, as suggested

⁶⁷ Exhibit 26:3.

⁶⁸ Exhibit 26:3.

⁶⁹ Exhibit 26:2.

by the PTA.⁷⁰ He asserted the assessments for Platte County should not be based upon generalized statewide sales statistics.

The PTA's corrective actions, as suggested in emails and letters, were not authorized or required by Neb. Rev. Stat. § 77-1330 as they did not constitute laws, rules, regulations, manuals, or directives.⁷¹ In each of PAD's communications to the County Assessor and the County Board, the record indicates PAD appeared to be advocating for assessments that would result in certain desired assessment outcomes. The statement, "[t]his is unfortunate" seems to indicate the same.⁷² Additionally, the suggestion to "spot back" an LCG classification (to 2019 values) would be contrary to the express requirements of LB 372. To read the statute otherwise would be to give LB 372 no effect.

While we have noted the actions taken by PAD and by the County Board, as described in Part V, Section B (4) of this Order, we do not suggest they were the basis for the County Board's protest decisions that are the subject of this appeal. Thus, while these actions appear to have been improper, they have no probative value in our determinations relating to the decisions of the County Board that are being considered in these appeals.

5. Evidence of 2019 Valuations as Basis for 2020 Valuations

The Property Valuation Protest forms indicate that the County Board simply changed the 2020 valuations of the Subject Properties to the 2019 valuations. While the County Board offered no explanation of the basis for its determination in Case No. 20A 0004 beyond the

⁷⁰ Exhibit 26:1.

⁷¹ "The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the materials in the performance of their duties...." Neb. Rev. Stat. § 77-1330(1) (Reissue 2018).

⁷² Exhibit 26:2.

statement on the Property Valuation Protest: “Returned to 2019 value pending TERC hearing,”⁷³ the following evidence was received regarding the other two parcels.

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.⁷⁴ 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.⁷⁵ We therefore find that Stejskal’s opinion of the market value per acre of the agricultural land is not an 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

⁷³ E4

⁷⁴ In his cost approach, Stejskal determined the improvement value to be \$32,500. Exhibit 28:37.

⁷⁵ 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.

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.⁷⁶

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 \$600,000.⁷⁷

In Case No. 20A 0003, after removing the market value of the improvements involved in the sale, \$2,730,⁷⁸ the County Board determined the agricultural land had a taxable value of \$217,070.⁷⁹ In

⁷⁶ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

⁷⁷ Exhibit 28:9.

⁷⁸ Exhibit 3.

⁷⁹ *Id.*

Case No. 20A 0005, the County Board determined the taxable value of the agricultural land to be \$251,050.⁸⁰

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.⁸¹ 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 6.⁸² 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 paid for the "crop land" acres. As was also the case with the Stejskal appraisal, the determination regarding the per acre sale price 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 Board

⁸⁰ Exhibit 5.

⁸¹ 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).

⁸² "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.

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 the assessed value determinations by the County Assessor constitute competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds assessed value determinations by the County Assessor are clear and convincing evidence that the County Board decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board in each of these six appeals should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Platte County Board of Equalization determining the taxable values of the Subject Properties for tax year 2020 are vacated and reversed.
2. The taxable values of the Subject Properties for tax year 2020 are as follows:

Case No.	Parcel ID	Taxable Value
20A 0003/20A 0096	710028882	\$319,360
20A 0004/20A 0095	710163446	\$302,685
20A 0005/20A 0094	710163173	\$340,875

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 2020.

This Decision and Order is effective for purposes of appeal on June 5, 2024.⁸³

Signed and Sealed: June 5, 2024

SEAL



Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁸³ 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.