

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

ANDREW M. STECH,  
APPELLANT,

CASE NOS: 20A 0017,  
20A 0018 & 20A 0019

V.

KNOX COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE KNOX COUNTY  
BOARD OF EQUALIZATION

**For the Appellant:**

Andrew M. Stech,  
Taxpayer

**For the Appellee:**

John Thomas,  
Knox County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Properties are a 160-acre agricultural parcel, a 63.51-acre agricultural parcel, and a 55.9-acre agricultural parcel, all located in Knox County, Nebraska. The legal descriptions and Property Record Files (PRFs) of the Subject Properties are found at Exhibits 4, 5, and 6.

**II. PROCEDURAL HISTORY**

The Knox County Assessor determined the assessed values<sup>1</sup> of the Subject Properties were \$610,045 (20A 0017), \$284,335 (20A 0018), and \$257,170 (20A 0019) for tax year 2020. Andrew M. Stech (the Taxpayer) protested these assessments to the Knox County Board of

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<sup>1</sup> As used in this order “assessed” or “taxable” values refer to 75% of actual value or market value as required for the assessment of agricultural land or horticultural land.

Equalization (the County Board) and requested taxable<sup>2</sup> values of \$391,680, \$217,200, and \$189,165 respectively. The County Board determined the taxable values of the Subject Properties for tax year 2020 were \$610,045 (20A 0018),<sup>3</sup> \$284,335 (20A 0018),<sup>4</sup> and \$257,170 (20A 0020).<sup>5</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on January 5, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-28 were admitted into evidence.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>6</sup> 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.<sup>7</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the

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<sup>2</sup> As used in this order "assessed" or "taxable" values refer to 75% of actual value or market value as required for the assessment of agricultural land or horticultural land.

<sup>3</sup> Exhibit 1 (20A 0017).

<sup>4</sup> Exhibit 2 (20A 0018).

<sup>5</sup> Exhibit 3 (20A 0019).

<sup>6</sup> 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).

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

evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>8</sup>

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>9</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>15</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>11</sup> 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).

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

<sup>13</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

#### 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.<sup>16</sup>

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.<sup>17</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>18</sup> 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.<sup>19</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>20</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>21</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>22</sup> Agricultural land and horticultural land means a parcel of land, excluding land associated with a

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<sup>16</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>18</sup> *Omaha Country Club* at 180, 829.

<sup>19</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>20</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>22</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

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.<sup>23</sup>

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

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.<sup>26</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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

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<sup>23</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

<sup>25</sup> Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

<sup>26</sup> *Neb. Const.*, Art. VIII, § 1.

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

<sup>28</sup> *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).

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

<sup>30</sup> *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).

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.<sup>31</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>32</sup>

Under Nebraska law, agricultural land and horticultural land<sup>33</sup> is a distinct class of real property and is divided into multiple subclasses.<sup>34</sup> 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. PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.<sup>35</sup> “Land capability groups shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion.”<sup>36</sup> This soil conversion process conducted by

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

<sup>32</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>33</sup> Hereinafter referred to as “agricultural land.”

<sup>34</sup> Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

<sup>35</sup> 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.

<sup>36</sup> Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020).

PAD includes 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.<sup>37</sup>

## V. FINDINGS OF FACT

### A. Testimony of Andrew Stech

Stech is the Taxpayer and owner of the Subject Properties. Stech asserts the assignment of the Subject Properties to Market Area 1, and the subsequent valuation based upon that market area is arbitrary and unreasonable. Stech believes the value of the Subject Properties is better represented by the sales in Market Area 2 and based his requested valuations on that basis.

Stech stated he had drilled multiple irrigation test holes on the Subject Properties but was unsuccessful in finding any available groundwater for irrigation. Stech believes the unavailability of

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<sup>37</sup> 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.").

groundwater contributes to the lower values of property in Market Area 2. Stech stated the Subject Properties, while only less than a mile from Market Area 2, resulted in the dryland values of the Subject Properties being assessed higher than irrigated acres in Market Area 2.<sup>38</sup>

Stech stated he purchased the 160-acre Subject Property in November 2018 for \$544,000.<sup>39</sup> Stech noted this parcel is subject to a perpetual electrical easement which prohibits Stech from removing overhead electrical lines.

Stech provided a breakdown of the soil types and number of acres for the 160-acre Subject Property as it may be valued using the 2020 Average Acre Values for Market Area 2. Using these figures, Stech asserted the value of the 160-acre parcel should be \$301,782.<sup>40</sup> Stech conceded when he had purchased the 160-acre Subject Property, it was used as grassland, which was converted to mostly dryland use in 2019.

Stech provided the PRFs for properties he alleged to be comparable to the 160-acre Subject Property. The first PRF presented is a 160-acre parcel in Market Area 2 which sold in 2017 for \$665,000 and was assessed in 2017 at 335,005.<sup>41</sup> A second PRF demonstrates a sale of another 160-acre parcel in Market Area 1 in 2019 for \$920,000 and was assessed in 2019 at \$642,035.<sup>42</sup> A third sale of an 80-acre parcel sold in 2019 for \$530,000 was discussed by Stech but the PRF was not presented.

Stech presented similar testimony regarding the 63.51-acre Subject Property, presenting an opinion of value of \$135,426.<sup>43</sup> For the 55.9-acre Subject Property, he provided an opinion of value of \$123,406.<sup>44</sup>

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<sup>38</sup> See *Knox County 2020 Average Acre Value Comparison*, 2020 Reports & Opinions of the Property Tax Administrator, 54 Knox Page 30.

<sup>39</sup> Exhibit 13:1.

<sup>40</sup> Exhibit 13:1.

<sup>41</sup> Exhibit 11:4-5.

<sup>42</sup> Exhibit 11:18-19.

<sup>43</sup> Exhibit 15.

<sup>44</sup> Exhibit 14.



Stech stated both opinions of value were derived from data of similar farms located in Market Area 2.

### **B. Testimony of Monica McManigal**

Monica McManigal had been the Knox County Assessor since 1998. She had been employed with the Knox County Assessor's office since 1976. McManigal held the State Assessor's Certificate and was directly involved with the assessment of the Subject Properties.

McManigal testified the current market areas were set in 2010 based upon diversity in topography, NRCS soil classifications, rainfall, and market sales. She noted Knox County had previously been divided into two market areas encompassing roughly the eastern and western portions of the county.

McManigal testified one comparable property was most comparable to the 160-acre Subject Property.<sup>45</sup> The comparable property was also 160 acres located in Market Area 1 and contains a mixture of dryland and grassland uses. The comparable property was assessed in 2020 at \$642,035. McManigal concluded the Subject Properties are being valued appropriately and the market areas are not arbitrarily drawn.

## **VI. ANALYSIS**

As a preliminary matter, Nebraska Revised Statutes § 77-5007 outlines the Commission's powers and duties. The authority to create market area boundaries are not among those powers.<sup>46</sup> Stech also provides no legal precedent showing the Commission does have authority to alter or re-assign parcels to different market areas.

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<sup>45</sup> Exhibit 11:18-19.

<sup>46</sup> *Dodge Cty. Bd. of Equal. v. Nebraska Tax Equal & Rev. Comm.*, 10 Neb. App. 927, 933, 639 N.W.2d 683, 688 (2002).

Therefore, the Commission finds it does not have the legal authority to re-assign parcels from one market area to another.

Turning to the valuation of the Subject Properties, the 2020 PRF for the 160-acre Subject Property contain the following soil types and LCG codes based upon agricultural use:<sup>47</sup>

6300	6603	6681	6693	6694	6753	6789	6811	6789
2D1	1D	4D	2D	4D1	1D	4D	1D	
1G	1G	2G		2G				2G

The 2019 PRF for the same Subject Property contain the following soil types and LCG codes:<sup>48</sup>

6811	6789	6681	6693	6603	6753	6300	6694
1G	4G1	4G	3G1	1G	1G	2G1	4G1

A review of the 2019 and 2020 Average Acre Value Comparison for Knox County shows there was no variance in value per acre for dryland use LCGs present on the 160-acre Subject Property and only slight variance of \$1 or \$2 per grassland acre LCGs.

As Stech testified, he had changed the use of the majority of the acres on the 160-acre Subject Property from grassland use to dryland use. Accordingly, the Commission finds the increase in value for the 160-acre Subject Property is primarily due to the change in use as well as the requirement for agricultural land to be valued based upon its current use.

Regarding Stech’s argument that the Subject Properties be valued as if they were in Market Area 2, Nebraska Department of Revenue regulations define a market area as “an area with defined characteristics within which similar properties are equally competitive in the minds of buyers and sellers.”<sup>49</sup> Here, the County Assessor

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<sup>47</sup> Exhibit 4:3.

<sup>48</sup> Exhibit 4:6.

<sup>49</sup> 350 Neb. Admin. Code, ch. 50, § 001.21 (7/5/2017).

provided competent testimony indicating the market area boundaries in Knox County were based upon topography, rainfall amounts, and market sales.

The comparable sales provided in Exhibit 11 generally demonstrate lower sale prices in Market Area 2 compared to properties included in Market Area 1. For example, a 152.92-acre parcel in Market Area 2, used as grassland, sold in 2018 for \$380,000.<sup>50</sup> As noted above, the 160-acre Subject Property sold in 2018, as grassland, for \$544,000.<sup>51</sup> Additionally, another 160-acre predominantly dryland use parcel in Market Area 2 sold in 2017 for \$665,000.<sup>52</sup> Whereas a 160-acre predominantly dryland use parcel in Market Area 1 sold in 2019 for \$920,000.<sup>53</sup>

The Commission finds, based on the record, that all three Subject Properties were assessed based upon a reasonable assessment methodology and supported by comparable sales within Market Area 1.

## VII. CONCLUSION

The Commission finds there is not competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board are affirmed.

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<sup>50</sup> Exhibit 11:8.

<sup>51</sup> Exhibit 4:2.

<sup>52</sup> Exhibit 11:4.

<sup>53</sup> Exhibit 11:18.

## VIII. ORDER

### IT IS ORDERED THAT:

1. The decisions of the Knox County Board of Equalization determining the value of the Subject Properties for tax year 2020 are affirmed.
2. The taxable value of the Subject Property in Case No. 20A 0017, Parcel Identification Number 540007934, for tax year 2020 is:  
**\$610,045.**
3. The taxable value of the Subject Property in Case No. 20A 0018, Parcel Identification Number 540013031, for tax year 2020 is:  
**\$284,335**
4. The taxable value of the Subject Property in Case No. 20A 0019, Parcel Identification Number 540007945, for tax year 2020 is:  
**\$257,170**
5. This Decision and Order, if no appeal is timely filed, shall be certified to the Knox County Treasurer and the Knox County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2020.

9. This Decision and Order is effective for purposes of appeal on November 21, 2023.<sup>54</sup>

Signed and Sealed: November 21, 2023

SEAL



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Robert W. Hotz, Commissioner

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Steven A. Keetle, Commissioner

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<sup>54</sup> 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.