

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

LISA F. RUSH
APPELLANT,

V.

JOHNSON COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 20A 0056,
20A 0057, 20A 0058, 20A 0059,
21A 0200, 21A 0201, 21A 0202
& 21A 0203

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE JOHNSON COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Lisa F. Rush,
Taxpayer

For the Appellee:

Benjamin Beethe,
Deputy Johnson County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Properties are four agricultural parcels located in Johnson County, Nebraska. The legal descriptions and Property Record Files (PRFs) of the Subject Properties are found at Exhibits 9-12.

II. PROCEDURAL HISTORY

The Johnson County Assessor (the County Assessor) determined the assessed values of the Subject Properties were as shown below. Lisa F. Rush (the Taxpayer) protested these assessments to the Johnson County Board of Equalization (the County Board) and requested taxable values as shown below. The County Board determined the taxable values of the Subject Properties as indicated below.

Case Nos.	Parcel ID	2020 Assessed Value	2020 Requested Value	2020 BOE Value	2021 Assessed Value	2021 Requested Value	2021 BOE Value
20A 0056¹ 21A 0202²	490036333	\$1,082,488	\$934,756	\$1,082,488	\$1,062,784	\$931,895	\$1,062,784
20A 0057³ 21A 0203⁴	490004725	\$707,531	\$620,614	\$704,395	\$682,731	\$640,415	\$682,731
20A 0058⁵ 21A 0200⁶	490004792	\$242,282	\$237,145	\$242,282	\$242,282	\$229,913	\$242,282
20A 0059⁷ 21A 0201⁸	490064515	\$11,222	\$9,728	\$11,222	\$10,722	\$10,175	\$10,722

¹ Exhibit 1.

² Exhibit 7.

³ Exhibit 2.

⁴ Exhibit 8.

⁵ Exhibit 3.

⁶ Exhibit 5.

⁷ Exhibit 4.

⁸ Exhibit 6.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 24, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-124 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁹ 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.¹⁰

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.¹¹

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.¹²

⁹ 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).

¹⁰ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹¹ *Id.*

¹² Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹³

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁸

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

¹³ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁴ 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).

¹⁵ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁶ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.¹⁹

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.²⁰ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²¹ 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.²² All real property in Nebraska subject to taxation shall be assessed as of January 1.²³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁴

A. Agricultural Land

Under Nebraska law, agricultural and horticultural land²⁵ is a distinct class of real property and is divided into multiple subclasses.²⁶

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.²⁷ 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

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁰ *Id.*

²¹ *Omaha Country Club*, 11 Neb.App. at 180, 645 N.W.2d at 829.

²² Neb. Rev. Stat. § 77-131 (Reissue 2018).

²³ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁴ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²⁵ Hereinafter referred to as “agricultural land.”

²⁶ Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

²⁷ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.²⁸

The primary use subclasses of agricultural land are irrigated cropland, dryland cropland, and grassland.

Agricultural land is valued based on soil type and current use.²⁹ Soil type is determined by standards developed by the Natural Resources Conservation Service (NRCS) that assigns each soil type a four-digit code. The Property Assessment Division (PAD) within the Nebraska Department of Revenue then classifies the codes into Land Capability Groupings (LCG)³⁰ depending on the current use (i.e., irrigated cropland, dryland cropland, or grassland) and productivity. The 24 LCGs are as follows:

	Most Productive				to	Least Productive		
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

All acres used for irrigated cropland, dryland cropland, and grassland are classified under one of these LCGs.

Prior to the enactment of 2019 LB 372, PAD classified each four-digit soil type it received from the NRCS into an LCG based upon a dryland capability classification per Rules & Regulations.³¹ This approach prioritized a standardized valuation, but it did not reflect the

²⁸ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

²⁹ Neb. Rev. Stat. § 77-1363.

³⁰ 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.

³¹ “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.

impact of the specific agricultural practices on the overall productivity. The legislature modified this approach with 2019 LB 372.

B. Changes for Tax Year 2020

In 2019, the Nebraska Legislature amended Neb. Rev. Stat. §77-1363 so that classification was no longer based on dryland cropland standards.³² The legislation modified the statute by adding “Land capability groups shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion.”³³ Each soil type is categorized depending on its current use (i.e., as dryland cropland, irrigated cropland, or grassland) productivity. For example, soil type 7863 when used as irrigated cropland has an LCG of 2A, but when it is used as grassland the LCG is 1G1.³⁴ In turn, a landowner has their property valued according to their actual use of the land. The shift to an actual use valuation is not yet reflected in regulations.³⁵

C. Uniform Valuation

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.³⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁷ 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

³² 2019 LB 372 § 1.

³³ *Id.*

³⁴ Exhibit 10:2.

³⁵ 350 Neb. Admin. Code ch 14 § 004.08B (rev. 3/15/09), “As soil mapping is completed, conversion legends are prepared by the Dept. of Revenue, PAD, *according to the dryland capability classification* of each soil.” (emphasis added).

³⁶ *Neb. Const.*, Art. VIII, § 1.

³⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

a disproportionate part of the tax.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁴²

V. FINDINGS OF FACT

A. Testimony of Lisa Rush.

Lisa Rush was an owner of the Subject Properties. As of the date of the hearing, the Subject Properties had been purchased by JLCC LLC, of which Rush was a member. Rush testified she had requested information from the County Assessor regarding her parcel values. She received information for the 2020 soil values⁴³ and a Johnson County agricultural market area spreadsheet.⁴⁴ Rush requested an explanation as to how the 2020 soil values were calculated, but alleges she never received any answer. She also inquired about a discrepancy

³⁸ *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).

³⁹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁰ *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).

⁴¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴² *Id.* at 673, 94 N.W.2d at 50.

⁴³ Exhibit 40.

⁴⁴ Exhibit 41.

between the 2020 Agricultural parcel sales list⁴⁵ and the Johnson County market spreadsheet.

Rush presented a spreadsheet of all Johnson County agricultural sales of parcels between 30 acres and 500 acres from October 1, 2016, to September 30, 2019.⁴⁶ This spreadsheet lists 70 sales. The Johnson County market area spreadsheet lists only 54 sales. Rush contends nine of the additional 16 sales⁴⁷ should have been included in the valuation process for a total of 63 sales. She believed the omission of these sales contributed to over-valuation of the Subject Properties.

Rush also argued the County Assessor's use of LCG codes resulted in valuations that were arbitrary or unreasonable, or that the Subject Properties were not valued uniformly or proportionately with other properties. She asserted LCG codes that grouped several NRCS soil types did not properly account for the value variances between the individual soil types. Rush provided two emails from the PAD that indicate Land Capability Group (LCG) codes were an administrative tool⁴⁸ and that an LCG conversion in and of itself should not change agricultural land values.⁴⁹

B. Testimony of Terry Keebler

Terry Keebler was the Johnson County Assessor and was directly involved in the assessment of the Subject Properties. He was not a licensed appraiser but did hold the State Assessor's Certificate.

Keebler testified the valuation of agricultural land in Johnson County was based upon sales from the preceding three years. PAD regulations required him to inventory and categorize all agricultural land based upon use and soil type for determining the proper LCG

⁴⁵ Exhibit 39.

⁴⁶ Exhibit 42.

⁴⁷ Listed in exhibit 42.

⁴⁸ Exhibit 49.

⁴⁹ Exhibit 50. The Commission notes that the email does not assert that LCG conversion will not affect values, but that LCG conversion would not be the sole factor determining changes to land value.

codes. Using this data, Keebler then determined a value per acre for each LCG code based on the sales.

The sales used in this analysis were those that had been accepted by PAD as valid for inclusion into the State sales file. The State sales file excludes sales that may be outliers or unrepresentative of the standard arms-length sale. These include instances where a sale price deviated more than 5% from the improvement value, or where fewer than 40 acres were used in agricultural production.

Keebler stated several of the nine additional sales offered by Rush were properly excluded from analysis because they had land use changes between the date of sale and the assessment dates. Another had been included because it was a 10.5-acre sale which was subsequently combined with an adjacent parcel; and the combined parcel was part of the analysis.

Keebler acknowledged two sales should have been included in the analysis, and one additional sale was erroneously included. Keebler testified these corrections would not have substantially altered the statistical median for the LCG per-acre values or the valuations for the Subject Properties.

Keebler interpreted the emails from the PAD to mean that land values should not increase across all agricultural land based on the conversion to new LCG codes. The overall value change from LCG conversions in Johnson County was less than 1% for both dryland and irrigated land. Keebler did concede that grassland had an 8% increase, but that was based on sales rather than LCG conversions.

VI. ANALYSIS

A taxpayer must present evidence that establishes the actual value of the property and evidence the property was not uniformly and proportionately assessed with other property in the county.⁵⁰ The

⁵⁰ *Future Motels, Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565, 570, 563 N.W.2d 785, 789 (1997); *Beynon v. Board of Equalization*, 213 Neb. 488, 329 N.W.2d 857 (1983).

Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim a property is overvalued.⁵¹

The Commission notes Rush’s argument that the sales file did not include nine additional sales during the relevant sales period. The “sales file” is “a data base of sales of real property, including arm's length transactions, in the State of Nebraska” and is developed and maintained by the PTA. All sales in the sales file are deemed to be “arm’s length” transactions unless determined otherwise.⁵²

Keebler concedes there were two sales which were erroneously excluded and one sale which was erroneously included in his analysis. However, Keebler opined these three sales would not have significantly changed the statistical median. Rush did not rebut this assertion with clear and convincing evidence demonstrating any significant change to the statistical median. The Commission finds that Keebler’s error with regard to the three sales does not render the County Board’s decision arbitrary or unreasonable.

Converting the LCG codes was also neither arbitrary nor unreasonable under the circumstances. Rush relied on emails from PAD⁵³ to assert the valuation of the Subject Properties is incorrect due to the use of LCGs. The Commission does not reach the same conclusion. It is well within the authority of the PAD to classify soil types for valuation purposes.⁵⁴ Before tax year 2020, the regulation required that LCG’s be based upon the dryland cropland capability classification.⁵⁵ The statute was silent on the point. 2019 LB 372

⁵¹ *Appeal of Newman*, 167 Neb. 66, 672-73, 94 N.W.2d 47, 50-51 (1959) (citing *Le Dioyt v. Cty. of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956)).

⁵² *County of Douglas v. Nebraska Tax Equal. & Rev. Comm’n*, 296 Neb. 501, 511-12, 894 N.W.2d 308, 316 (2017) (citations omitted).

⁵³ Exhibits 49, 50.

⁵⁴ Neb. Rev. Stat. § 77-1363; see *Schmidt v. Thayer Cny. Bd. of Equal’n.*, 10 Neb. App. 10 (2001).

⁵⁵ 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.

changed this, requiring LCG classifications to be based on the applied use and not standardized to dryland cropland.⁵⁶ As a matter of statutory interpretation, we find that while the regulation has the force and effect of statutory law,⁵⁷ the more recent statute conflicts with the requirements of the regulation on the same subject matter.⁵⁸ As such, the more recent statute controls.⁵⁹ After following this rule of statutory construction, we give the statutory language its “plain and ordinary meaning”⁶⁰ and conclude that the methodology followed by the County Assessor was consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended.

Returning our focus to the County Assessor’s actions, it is neither arbitrary nor unreasonable for the County Assessor to take the actions compelled by law, nor is it arbitrary or unreasonable for a County Assessor’s actions to change based on changes to law. Accordingly, the Commission finds Keebler’s use of the soil classifications and LCGs as provided by PAD in valuing the Subject Properties to be consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended. The LCG conversion was the reasonable response to changed law, and therefore the County Assessor was required to make the conversions as required by law.

Rush did not prove by clear and convincing evidence that the values assigned to the Subject Properties were excessive or not equalized with similarly situated agricultural property in Johnson County. Rush did not prove by clear and convincing evidence the decisions of the County Board were arbitrary or unreasonable. In the absence of such evidence, the Commission should affirm the decisions of the County Board.

⁵⁶ “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.

⁵⁷ “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).

⁵⁸ *Bergan Mercy Health Sys. v. Haven*, 260 Neb. 846, 859-60, 620 N.W.2d 339, 349 (2000).

⁵⁹ See, *Mauler v. Pathfinder Irr. Dist.* 244 Neb. 217, 219, 505 N.W.2d 691, 693 (1993).

⁶⁰ *In re Adoption of Yasmin S.*, 308 Neb. 771, 774, 956 N.W.2d 704, 706 (2021).

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 the County Board's decisions were arbitrary or unreasonable.

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

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Johnson County Board of Equalization determining the taxable values of the Subject Properties for tax years 2020 and 2021 are affirmed.
2. The taxable values of the Subject Properties for tax years 2020 and 2021 are as follows:

Case Nos.	Parcel ID	2020 Value	2021 Value
20A 0056, 21A 0202	490036333	\$1,082,488	\$1,062,784
20A 0057, 21A 0203	490004725	\$704,395	\$682,731
20A 0058, 21A 0200	490004792	\$242,282	\$242,282
20A 0059, 21A 0201	490064515	\$11,222	\$10,722

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Johnson County Treasurer and the Johnson 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 years 2020 and 2021.

7. This Decision and Order is effective for purposes of appeal on April 8, 2025.⁶¹

Signed and Sealed: April 8, 2025

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁶¹ 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.