

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mark Reichert,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 20A 0061

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
SCOTTS BLUFF COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is an agricultural parcel with improvements with a legal description of W1/2 NE, 22-21-53 (80.47).
2. The Scotts Bluff County Assessor assessed the Subject Property at \$312,376 for tax year 2020.
3. Mark Reichert (the Taxpayer) protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$269,595 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$289,186 for tax year 2020.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on September 20, 2021, at Hampton Inn & Suites, 301 US-26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Mark Reichert was present at the hearing.
8. Angela Dillman (the Assessor) and Kirk Fellhoelter (Deputy County Attorney) were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
11. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon

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

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. 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 Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ 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.”⁴

12. 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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer stated his main issue is with the land valuation of the Subject Property. The Taxpayer stated the LCG codes for the Subject Property changed from 4A1, 4G and 4G1 to 2A, 3G and 2G from 2019 to 2020. The Taxpayer wants to know how land can change classifications from one year to the next. The Taxpayer provided a Custom Soil Resource Report done by the Natural Resources Conservation Service (NRCS) that shows the soils in question have a farmland classification of “not prime farmland.” The Taxpayer stated the land needs to be put back to the 2019 classifications of 4A1, 4G and 4G1.
17. The Assessor stated that although the main issue with the Subject Property was the land valuation, she reviewed the improvements and made adjustments which resulted in a lower improvement value being recommended to the County Board.
18. In 2019, Neb. Rev. Stat. § 77-1363 was amended with the passage of LB 372. The bill specified that Land Capability Group (LCG) classifications must be based on land-use specific productivity data from the NRCS. The Nebraska Department of Revenue, Property Assessment Division, used the NRCS data to develop a new LCG structure to comply with the statutory change. Each county received the updated LCG changes and applied them to the inventory of land in the 2020 assessment year.⁹

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 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 Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ 2020 Reports and Opinions of the Property Tax Administrator: Scotts Bluff County, page 5.

19. The Assessor stated she implemented the new LCG conversion as a result of LB 372, which changed some LCG codes in some counties in Nebraska. The Assessor stated the LCG codes on the Subject Property changing from a class 4 soil to a class 2 and 3 soil were due to the implementation of LB 372.
20. The changes in LCG classification did not always correlate with an increase in assessed value per acre. Grassland classified as 2G or 3G, such as the grassland on the Subject Property, was assessed at \$345 per acre. This is the same per acre value as grassland classified as 4G1 or 4G, which were the previous classifications for the grassland on the Subject Property.¹⁰ However, the acres now classified as 2A were assessed at \$1,825 per acre, an increase of \$195 per acre from the per acre value applied to 4A1 acres in 2019.¹¹
21. The NRCS report provided by the Taxpayer does not show what classification each soil type should receive under Nebraska’s LCG classification system. The Taxpayer has not proven that the Property Assessment Division’s reclassification of soil types after the enactment of LB 372 results in values that are incorrect, arbitrary, or unreasonable.
22. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$124,396
<u>Improvements</u>	<u>\$164,790</u>
Total	\$289,186

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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.

¹⁰ 2020 Reports and Opinions of the Property Tax Administrator: Scotts Bluff County, page 43.

¹¹ See 2019 Reports and Opinions of the Property Tax Administrator: Scotts Bluff County, page 31.

6. This Decision and Order shall only be applicable to tax year 2020.
7. This Decision and Order is effective on January 31, 2022.

Signed and Sealed: January 31, 2022

James D. Kuhn, Commissioner