

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

JEFF A. UHLIR,
APPELLANT,

V.

KNOX COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NOS: 20A 0091 &
20A 0092

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

CASE NO. 20A 0093

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

For the Appellant:

Jeff A. Uhlir,
Taxpayer

For the Appellee:

John Thomas,
Deputy Knox County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Properties are three agricultural parcels located in Knox County, Nebraska. The parcel in Case No. 20A 0091 is 480 acres. The parcel in Case No. 20A 0092 is 160 acres. And the parcel in Case

No. 20A 0093 was assessed as 240 acres.¹ The legal description and Property Record File (PRF) of the Subject Properties are found at Exhibits 5, 6, and 7.

II. PROCEDURAL HISTORY

The Knox County Assessor determined the assessed values of the Subject Properties. Jeff A. Uhlir (the Taxpayer) protested these assessments to the Knox County Board of Equalization (the County Board) and requested different taxable values. The County Board determined the taxable values of the Subject Properties for tax year 2020. The assessed value, the value requested by the Taxpayer at the time of the Protest, and the County Board determination for each parcel are listed below:

Case No.	Parcel ID	Assessed Value	Requested Value	County Board Determinations
20A 0091 ²	540004692	\$816,995	\$615,300	\$816,995
20A 0092 ³	540008863	\$202,175	\$151,540	\$202,175
20A 0093 ⁴	540008871	\$307,685	\$280,515	\$307,685

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 1-25 were admitted into evidence.

¹ This acre count was disputed by the Taxpayer, as will be discussed below.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 3.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁵ 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.⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject

⁵ 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).

⁶ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

Property is overvalued.¹⁰ 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.¹¹

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.¹² 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.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

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

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the real property and an identification of the property rights valued.¹⁵

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.¹⁶ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.²¹ Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.²²

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²³ Under Neb. Rev. Stat. § 77-1359:

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

¹⁷ *Omaha Country Club* at 180, 829.

¹⁸ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁹ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²² Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

²³ Neb. Rev. Stat. § 77-132 (Reissue 2018).

(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.²⁴

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.²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ 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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³¹

²⁴ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

²⁵ *Neb. Const.*, Art. VIII, § 1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁷ *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).

²⁸ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *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).

³⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³¹ *Id.* at 673, 94 N.W.2d at 50.

V. FINDINGS OF FACT

A. Witness Testimony

1. Testimony of Joel Hunt

Joel Hunt was a Legislative Aide to State Senator Steve Erdman of District 47. Hunt does not hold any appraisal licenses or certificates. Hunt testified that in 2019, LB 372 was passed and signed into law. In his capacity as a legislative aide, Hunt provided drafting relating to LB 372. He stated his belief that the bill was intended to force the Property Assessment Division of the Nebraska Department of Revenue to Use the Natural Resources Conservation Service (NRCS) soil types, and that Land Capability Groups (LCGs)³² would be assigned based upon the applied use of the soil, rather than being assigned based upon the dryland crop capability of the soil.

Hunt stated that once LB 372 passed, Ruth Sorensen, the Property Tax Administrator, put together a training for the county assessors indicating that agricultural values should not have changed solely due to the LCG conversions.

Hunt testified he toured the Subject Properties and asserted the 480-acre parcel was swampland and therefore unsuitable for use as cropland, unsuitable for grazing cattle, and the only grass growing was unsuitable for grazing. Hunt asserted the entire 480-acre parcel should have been classified as waste ground.

Hunt testified that in 2020, Senator Erdman's office began receiving communications from taxpayers arguing that some county assessors were using the LCG reclassifications mandated by LB 372 as a reason to increase agricultural land values. In response, Hunt stated

³² 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.

he contacted Sorensen, who sent an email to all county assessors reminding them not to use the LCG conversion as a reason to increase values.

Hunt noted one soil type, NRCS soil classification number 6578, was classified in 2019 as LCG 2D1, with an assessed value of \$93,210 over 44.2 acres on one of the parcels of the Subject Property. In 2020, the same acres had been reclassified as LCG 1D, resulting in a value of \$110,480.³³ Hunt view this increase as a violation of what the Property Tax Administrator advised the county assessors not to do. In contrast, Hunt states soil type 9999 – the soil type used for water, was classified as grass.³⁴

2. Testimony of Gerald Green

Dr. Gerald Green was a retired agricultural and mechanical engineer. He does not hold any appraiser license or certification. Dr. Green was involved in the legislative process for LB 372. He stated he examined in depth the documents for 2019 and 2020 and believes several other changes occurred at the same time as LB 372 leading to the valuation increases at issue.

Dr. Green created a document indicating that during the reclassification, a significant number of acres were shifted between the LCG classifications.³⁵ Dr. Green testified he believed these reclassifications were done correctly. He also notes the per acre values assigned for each LCG did not change between 2019 and 2020. Dr. Green referenced the Reports and Opinions of the Property Tax Administrator for Knox County for tax year 2020, indicating only a single sale for the 80% Major Land Use category occurred for Market Area 2 from October 1, 2016, to September 30, 2019.³⁶ Dr. Green asserts this single sale would have been insufficient to adjust the LCG valuations in 2020. He noted that presumably, if the county assessor

³³ See Exhibits 5:4, 5:16.

³⁴ Exhibit 5:4.

³⁵ Exhibit 24.

³⁶ See 2020 Reports & Opinions of the Property Tax Administrator for Knox County, at 29.

had converted the LCG data for the prior three years' sales, the per acre values would have been different between 2019 and 2020.

Dr. Green did not know whether there were sufficient sales occurring with less than 80% Major Land Use to determine the LCG values for 2020. Dr. Green also asserts that the water acres classed as grassland is arbitrary and should be classed as waste ground.

3. Testimony of Jeff Uhlir

Jeff Uhlir commissioned a survey which was dated November 26, 2021, regarding the 240-acre parcel.³⁷ This survey found the parcel to contain only 226.76 acres.³⁸ Uhlir stated that as a result of the survey he determined he had been assessed for part of the adjacent parcel's crop ground for several years. Uhlir testified that the acres marked as water should not be classified and assessed as grass. He also argued the swampy portions of the Subject Properties were worth less than the non-swampy acres.

4. Testimony of Monica McManigal

Monica McManigal was the Knox County Assessor since 1998 and had previously served as the Deputy County Assessor since 1994. She held the State Assessor's Certificate.

McManigal stated that forage production is not the only criteria used to value grassland acres as the production criteria does not account for sales. McManigal also stated the water acres, classified as soil type 9999, were valued the same as the grass acres around that water because historically, some 9999 acres included a dam, and some did not. Therefore, McManigal argued, valuing 9999 water acres using the same as the surrounding acres would equalize valuations across

³⁷ Parcel ID: 54008871, Case No. 23A 0093.

³⁸ Exhibits 16, 23.

Knox County. She also stated that many ranchers find having water on their land to be of value and not simply wasted acres.

McManigal noted there were 4.48 acres of waste ground on the 480-acre parcel which comprises the creek near the home site, and the swampy ground near the southwest corner of the property.

McManigal testified the changed LCG codes were provided by the Property Assessment Division of the Nebraska Department of Revenue, and she made the changes as she believed were required by law. McManigal testified that once the soil conversions were made, all taxpayers within Market Area 2 were provided the same per-acre valuation based upon the LCG code which were based on NRCS soil type. McManigal denied using the LCG conversions required by LB 372 as an excuse to raise the Taxpayer's valuations.

McManigal recounted an on-site visit to portions of the Subject Property in June 2020 with the Taxpayer. As a result of that visit, she made spot adjustments affecting the value of certain categories of soil.³⁹ She also adjusted site acres from 13 acres to 5 acres as the Taxpayer had been using those acres for grazing.

As to the sales in Market Area 2, McManigal noted nearly every parcel is a mixed dryland and grass land use. However, she testified there were 29 or 30 sales in the market area which were sufficient to support the valuations for tax year 2020.

Regarding the Taxpayer's survey of the parcel in Case No.20A 0093,⁴⁰ McManigal stated she relied upon the deeded acres, had only recently received the survey, and had not had the opportunity to overlay the survey results to determine the soil differences for the 240-acre parcel. McManigal stated she relied upon the GIS system and

³⁹ Exhibit 5:4.

⁴⁰ Exhibit 23.

overlays to determine the number of acres for each soil type and that has been her practice for several years.

B. Analysis

The foremost issue in these appeals is the taxpayer's assertion the Knox County Board of Equalization and Knox County Assessor set values for the Subject Properties 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 2020.⁴¹ Whether the assessment accounted for the acres alleged to be swampy was also a primary issue.

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. §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."⁴² 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 land⁴³ is a distinct class of real property and is divided into multiple subclasses.⁴⁴ 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

⁴¹ 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.

⁴² LB 372, §1, and italicized above as codified in Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020).

⁴³ Hereinafter referred to as "agricultural land."

⁴⁴ Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

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.⁴⁵ This soil conversion process conducted by 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 using 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.⁴⁶

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.⁴⁷ For example, soil

⁴⁵ 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.

⁴⁶ 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.").

⁴⁷ "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.

type 2111, when used as dryland cropland, was classified as LCG 2D, with a productivity level of 2.⁴⁸ PAD then relied upon the dryland cropland capability classification for soil type 2111 to also classify the irrigated cropland and the grassland at the productivity level of 2D, 2A, and 2G, respectively. PAD directed assessors to use for each soil type the same productivity level that was designated for dryland cropland for both irrigated cropland and grassland.⁴⁹

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, soil type 2111, which we discussed earlier, had been classified as 2D, 2A, and 2G in 2019, was classified as 4D, 4A, and 2G1 for tax year 2020.⁵⁰ As a part of this reclassification for irrigated land and grassland PAD also reclassified some dryland soil types into different LCG's. For example, for tax year 2020, soil type 6578 when used as dryland cropland was designated as 1D, when in 2019 it was 2D1.⁵¹ For tax year 2020, PAD directed the County Assessor to use these classifications for the assessment of agricultural land in Knox County.

McManigal testified that she used the updated soil classifications and LCG's provided to her by PAD as shown in Exhibit 14. Per the PRFs, there were several LCG changes as the chart below shows for the 480-acre parcel:

⁴⁸ See, Exhibit 14:1. We are using the term "productivity level" to identify the numeral within each LCG.

⁴⁹ See, Title 350 Neb. Admin. Code, Chapter 14, Section 002.41.

⁵⁰ See, E14:1

⁵¹ See, E14:2

NRCS Soil Symbol	2019 LCG Code ⁵²	2020 LCG Code ⁵³
6578	2D1	1D
6609	3D1	2D
3259	4G	3G
3285	1G	1G1
3286	1G	1G1
3287	3G1	1G1
3642	3G1	1G1
4352	3G	1G1
6508	2G1	2G
6575	1G1	2G1
6605	2G	2G1
6663	4G	2G1
6703	3G	2G1
6727	4G1	1G
6845	2G	2G1
8938	4G	2G

For the 160-acre parcel, the changes were as shown below:

NRCS Soil Symbol	2019 LCG Code ⁵⁴	2020 LCG Code ⁵⁵
3221	4G1	2G
3232	4G	3G
3335	2G	2G1
3336	4G1	2G1
3337	4G	2G1
4791	4G1	3G1
6575	1G1	2G1
6605	2G	2G1
6606	4G1	2G1
6727	4G1	1G
6845	2G	2G1

And for the 240-acre parcel the LCG changes were as follows:

NRCS Soil Symbol	2019 LCG Code ⁵⁶	2020 LCG Code ⁵⁷
3221	4G1	2G
3232	4G	3G
3331	2G	2G1
3335	2G	2G1
3336	4G1	2G1
3337	4G	2G1
6605	2G	2G1
6726	4G	1G
6727	4G1	1G
6845	2G	2G1

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 14, 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,⁵⁸ 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 2020.⁵⁹

⁵⁶ Exhibit 7:6.

⁵⁷ Exhibit 7:3.

⁵⁸ 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.

⁵⁹ "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.

As a matter of statutory interpretation, we find that while the regulation has the force and effect of statutory law,⁶⁰ the more recent statute conflicts with the requirements of the regulation on the same subject matter.⁶¹ As such, the more recent statute controls.⁶² After following this rule of statutory construction, we give the statutory language its “plain and ordinary meaning”⁶³ and conclude that the methodology followed by the County Assessor was consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended.

For tax year 2020, the County Assessor utilized agricultural sales in the three years prior to the effective date of January 1, 2020.⁶⁴ For market area 2, there were 29 qualified sales.⁶⁵ The County Assessor analyzed these sales to determine the values per acre for each LCG for each use, including irrigated cropland, dryland cropland, and grassland. McManigal testified the values per acre for each LCG were applied consistently across all acres in market area 2. The Commission finds this assessment practice to be reasonable. The Taxpayer did not offer any persuasive evidence to the contrary.

3. Classification of Water and Swampy Ground

McManigal’s testimony indicated the acres which constituted a retention pond on the 480-acre property were valued the same as the surrounding grassland acres due to that retention pond providing

⁶⁰ “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).

⁶¹ *Bergan Mercy Health Sys. v. Haven*, 260 Neb. 846, 859-60, 620 N.W.2d 339, 349 (2000).

⁶² See, *Mauler v. Pathfinder Irr. Dist.* 244 Neb. 217, 219, 505 N.W.2d 691, 693 (1993).

⁶³ *In re Adoption of Yasmin S.*, 308 Neb. 771, 774, 956 N.W.2d 704, 706 (2021).

⁶⁴ 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.

⁶⁵ See, 2020 Reports & Opinions of the Property Tax Administrator, Knox County, pages 15-16, and 28-29, from the Statewide Equalization Proceedings for tax year 2020.

value to the property. To the contrary, Uhlir argues these acres should be valued as waste acres because no crop production can occur.

Wasteland is defined in Rules and Regulations as:

...land that cannot be used economically and are not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land which may be classified as wasteland are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts, which are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification.⁶⁶

Other Rules and Regulations deal more directly with the facts at issue. For example:

Private lakes and ponds, whether natural or artificial, and not developed or used for recreational purposes, may be classified with the adjacent land. In many situations an analysis needs to be completed to determine the proper classification and valuation of these areas. Included with lakes are sandhill lakes, inactive gravel

⁶⁶ 350 Neb. Admin. Code, ch. 14, § 002 (3/15/2009).

pits, ox bow lakes in old stream channels, and intermittent bodies of water caused by depressions and claypan soils.⁶⁷

This regulation would support McManigal's explanation that the retention pond on the 480-acre parcel was classified with the surrounding grassland. On that basis, the Commission finds the Taxpayer has not produced clear and convincing evidence demonstrating that McManigal's valuation of the water acres to be arbitrary or unreasonable.

As to Uhlir's and Hunt's contentions regarding the 'swampy' portions of the 480-acre parcel, McManigal testified that spot adjustments were provided to account for this. These adjustments are reflected on the PRF as adjusting approximately 12 acres. The Taxpayer did not provide persuasive evidence that these acres would be more properly classified as wasteland.

4. Survey Results and Number of Assessed Acres

As Uhlir noted, the 2021 survey demonstrated he was being assessed for additional acres that were part of an adjacent parcel.⁶⁸ We find the acre count shown in the survey of 226.76 acres is clear and convincing evidence of the size of the parcel. Uhlir stated the wrongly assessed acres were row crop, but no dryland cropland or irrigated cropland acres appear on the county assessor's soil inventory in the property record file.⁶⁹ Since the record is lacking a specific acre-by-acre determination of the soil types and uses of the 13.24 acres which should not have been assessed as part of the parcel, we will account for the acres by comparing the survey, an aerial flight photograph, and the soil map for the parcel.⁷⁰ We know from the testimony, survey, and the soil layer map that the 13,24 acres do not contain any acres of road or site. The 13.24 acres include acres of waste and shelter belt, as well

⁶⁷ 350 Neb. Admin. Code, ch. 14, § 005 (3/15/2009).

⁶⁸ Exhibits 16, 23.

⁶⁹ See, Exhibit 7:6.

⁷⁰ Exhibit 9:9-10.

as grass and treed acres. The assessment of the parcel included 6.71 acres of waste and .24 acres of shelter.⁷¹ The remaining 6.29 acres of the 13.24 acres are more than the total acres assessed as treed acres. The waste acres were assessed at \$150 per acre, the shelter acres were assessed at \$400 per acre, and the treed acres were assessed at \$500 per acre.⁷² Using only these lowest valued land uses this amounts to an overassessment of the parcel of no less than \$4,248.⁷³

5. Damaged or Destroyed Property

During the hearing, Uhlir noted that at some point during 2020, a portion of the Subject Properties was damaged by fire. The Appeal of a determination of the County Board regarding destroyed real property pursuant to Neb. Rev. Stat §77-1307 is not before the Commission. Therefore, as the issue of a destroyed real property adjustment pursuant to Neb. Rev. Stat. § 77-1307, *et seq.* is not properly before the Commission, we will not address it further.

VI. CONCLUSIONS OF LAW

In Case Nos. 20A 0091 and 20A 0092, the Commission finds there is not 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 there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

In Case Nos. 20A 0093, the Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds there is clear and

⁷¹ Exhibit 7:3

⁷² Exhibit 7:3.

⁷³ $(6.71 \times \$150) + (.24 \times \$400) + (6.29 \times \$500) = \$4,248.$

convincing evidence that the County Board’s decision was arbitrary or unreasonable.⁷⁴

For the reasons set forth above, the determinations of the County Board should be affirmed in Case Nos. 20A 0091 and 20A 0092, and should be vacated and reversed in Case No. 20A 0093.

VII. 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 in Case No. 20A 0091 and Case No. 20A 0092 are affirmed.
2. The decision of the Knox County Board of Equalization determining the value of the Subject Property for tax year 2020 in Case No. 20A 0093 is vacated and reversed.
3. The assessed values of the Subject Properties for tax year 2020 are as follows:

Case No.	Parcel ID	Taxable Value
20A 0091	540004692	\$816,995
20A 0092	540008863	\$202,175
20A 0093	540008871	\$303,437

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.

⁷⁴ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

7. This Decision and Order shall only be applicable to tax year 2020.
8. This Decision and Order is effective for purposes of appeal on June 17, 2024.⁷⁵

Signed and Sealed: June 17, 2024

SEAL



Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁷⁵ 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.