

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Platte Valley Realty,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 20A 0139

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

Procedural Background

1. This Decision and Order is applicable only to an appeal for tax year 2020.
2. Platte Valley Realty (the Taxpayer) appeals the taxable value of an agricultural parcel (the Subject Property) in Platte County, Nebraska. The legal description is found in the Case File.
3. The parcel in Case No. 20A 0139 consists of 158.76 agricultural acres, with a property ID# 710029792. The Platte County Assessor (the County Assessor) assessed the parcel at \$899,435. The Taxpayer protested this value to the Platte County Board of Equalization (the County Board) and requested an assessed value of \$796,730. The County Board determined that the taxable value was \$899,435 for tax year 2020.
4. The Taxpayer appealed the decision of the County Board to the Tax Equalization & Review Commission (the Commission) on August 21, 2020.¹
5. A joint Single Commissioner hearing for the Subject Property was held on June 16, 2021, at a Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
6. Shelly Nielsen, the Secretary/Treasurer of the Taxpayer, was present at the hearing. Tom Placzek, the County Assessor for Platte County, was present for the County Board.

Generally Applicable Law

7. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²

¹ See Case Files.

² Neb. Rev. Stat. § 77-1301(1) (Supp. 2020).

8. The Commission’s review of a determination of the County Board of Equalization is de novo.³
9. 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 sufficient competent evidence to justify its action.”⁴ 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.”⁵
10. 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.⁶
11. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
12. A Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.⁸
13. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

Relevant Chronology of the Assessments and the Appeals

14. A statutory change was made in 2019 affecting the assessment of agricultural land and horticultural land beginning tax year 2020 relating to soil classifications. Neb. Laws LB 372, Section 1 (2019) amended Neb. Rev. Stat. §77-1363, adding one sentence: “Land capability groups shall be Natural

³ 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, 759 N.W.2d 464, 473 (2009).

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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. & Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion.”¹⁰

15. A Notice of Valuation Change was sent by the County Assessor to the Taxpayer.¹¹ The assessed value for the parcel was increased from tax year 2019 to tax year 2020.
16. On June 30, 2020, the Taxpayer filed a Property Valuation Protest for the Subject Property.¹²
17. In a letter dated July 9, 2020, and prior to the County Board making a decision on the protest, the Property Tax Administrator (PTA)¹³ of the Property Assessment Division (PAD) of the Nebraska Department of Revenue advised the Platte County Board Chairperson¹⁴ regarding the requirements of LB 372 and communicated to him that similar advice had already been given to the Platte County Assessor.¹⁵
18. The County Board considered the protest and entered its Decision for the protest on July 14, 2020.¹⁶ The decision affirmed the tax year 2020 assessed value as set by the County Assessor.¹⁷ A Notice of the Decision was mailed to the Taxpayer on July 24, 2020.¹⁸
19. In an undated document from the County Board and signed by the County Board Chairperson, the Taxpayer was encouraged to appeal the County Board’s July 14, 2020, decision. The letter stated that this advice was based upon an email the Board received from PAD.¹⁹
20. In a letter dated August 7, 2020, the County Board, communicated with the Taxpayer regarding the County Board’s July 14, 2020, protest decision by stating that the “County Board is on your side.”²⁰ In the letter, the County

¹⁰ LB 372 was approved by the Governor March 12, 2019, became effective September 1, 2019, and was the controlling statute as of the effective date of January 1, 2020.

¹¹ The County Assessor was required to notify the owner of record by June 1 of every item of real property which has been assessed at a value different than in the previous year. Neb. Rev. Stat. § 77-1315(2) (Reissue 2018).

¹² *Id.*

¹³ The Property Tax Administrator (PTA) is the chief administrative officer of the Property Assessment Division (PAD) of the Nebraska Department of Revenue. Neb. Rev. Stat. § 77-701(1). At all times relevant to these proceedings, Ruth Sorensen was the PTA.

¹⁴ At all times relevant to these proceedings Jerry Engdahl was the County Board Chairperson.

¹⁵ See, Case File. The contents of this letter will be discussed more fully below.

¹⁶ *Id.*

¹⁷ *Id.* The Taxpayer had a statutory right to appeal each County Board decision to the Commission if the appeals were filed by August 24, 2020. Neb. Rev. Stat. § 77-1510 (Reissue 2018).

¹⁸ See, Case File.

¹⁹ *Id.* The document containing the email from PAD will be discussed more fully below.

²⁰ The same letter was also sent to Taxpayers in several other appeals involving the assessment of agricultural land and horticultural land in Platte County for tax year 2020.

Board encouraged the Taxpayer to appeal the protest decision made by the County Board.²¹

21. The Taxpayer filed an appeal to the Commission of the County Board decision on August 21, 2020.²²

Soil Reclassifications

22. At the Hearing before the Single Commissioner, the Taxpayer argued that soil reclassifications and related assessments for tax year 2020 were done in error, resulting in assessments exceeding actual value. To support this assertion, the Taxpayer relied upon numerous communications after the enactment of LB 372 involving PAD and the County Board,²³ noted above, and as discussed below.
23. In an undated “guidance document” that was “advisory in nature,” relating to the soil survey conversions, PAD stated: “Agricultural land values should not change based upon LCG²⁴ conversion only.”²⁵ In the hearing, Shelly Nielsen stated that the Taxpayer had relied upon this statement as a guarantee that tax year 2020 assessments of each parcel would not be higher than 2019 assessments as a result of the soil conversions relating to the changes made by LB 372. According to Placzek, the guidance document was used in a presentation by PAD to County Assessors prior to January 1, 2020.
24. In undated documents under the letterhead of the Platte County Clerk / Board of Supervisors, the County Board wrote to taxpayers: “we encourage you to appeal your denied tax protest to TERC before August 24.”²⁶ In this document, the County Board encouraged taxpayers to appeal its own decisions. Engdahl explained: “Based on my conversation with Ruth Sorensen, Sarah Scott, and attorney Scott Shaver,²⁷ if the County Board follows-up with a ‘confession of judgment’, the TERC [Commission] will very likely return valuations to 2019 levels, if no improvements.”
25. In the same document, a photocopy of an email from PAD Field Operations Manager, Sarah Scott, to Chairperson Engdahl was included, wherein Scott

²¹ It is hard to measure the level of confusion this communication had on the Taxpayer when the same County Board that made a decision against the Taxpayer that was mailed on July 24, 2020, then two weeks later, on August 7, 2020, sent the Taxpayer communications saying the County Board is “on your side,” and encouraged the Taxpayer to appeal the County Board decision.

²² See, Case File.

²³ Each of these documents were provided to the Commission at the hearing and may be found in the Case File.

²⁴ An LCG is a land capability group and is defined and described at 350 NAC, Chapter 14, Section 004.08 (Revised 3/15/09).

²⁵ The guidance document stated that it was “**accurate** as of **August 26, 2019**.” (emphasis in original). It also stated that it was “provided in print as part of a presentation given by [PAD] staff.”

²⁶ The document was signed by Chairman Engdahl.

²⁷ Sarah Scott was the PAD Field Operations Manager and Scott Shaver was an attorney with PAD.

advised the County Board of the legal “option ... to confess judgment on any appeals to [TERC].” Scott’s email to Chairman Engdahl advised the County Board that taxpayers would first need to file appeals to TERC by August 24, 2020. Her email provided further explanation of the legal process, including advising the County Board of its “need to file a confession of [judgement] on each appeal with TERC,” and including the legal conclusion that, “If a confession of [judgement] is filed, TERC will consider this confession and if approved will issue an order for the county assessor to adjust the 2020 assessed value.”

26. Five days prior to the County Board determinations,²⁸ in a letter dated July 9, 2020, from the PTA to Chairperson Engdahl, the PTA explained that relating to the statutory change, “LCGs were developed by [PAD] utilizing NRCS data specific to each land use. These LCGs were to be implemented beginning with the 2020 [assessment] year.”
27. In the same letter, the PTA stated further that PAD had “encouraged” county assessors “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.” The PTA explained that PAD had met with Placzek, who advised PAD he would be making no such adjustments. In response to Placzek’s unwillingness to make adjustments designed to avoid any increases in the assessments of agricultural land, the PTA stated, “This is unfortunate, as affected agricultural landowners will bear a disproportionate tax burden without corrective action.” The letter closes with a time-sensitive suggestion that the County Board may have an option regarding such a corrective action.
28. Scott’s email of June 29, 2020, noted above, also included within “options” to consider regarding “dryland and irrigated LCGs with a significant value change,” that certain soil types could be “spotted back to the prior year classification.” This included soil types 6754, 6812, and 8476 for Platte County. However, Placzek emphasized that the Taxpayer’s Subject Property contained no acres with 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 Property.
29. The County Board then sent letters dated August 7, 2020, to the Platte County taxpayers who had protested appeals relating to these issues. In

²⁸ According to the Form 422, the County Board made its determination July 14, 2020.

those letters, after having denied the taxpayers' protests, the County Board stated to the protesters: "The Platte County Board is on your side regarding your June tax protest..." After making references to "letters from the Tax Commissioner," the County Board stated, "We encourage you to file an appeal to the [TERC] and use the information we provided in your arguments."²⁹

30. All of the communications noted above occurred after the legislation was approved by the Governor on March 12, 2019.

Statutory Interpretation of Neb. Rev. Stat. § 77-1363, as amended by LB 372.

31. For the reasons discussed below, the Commission will interpret the controlling statute relating to these appeals without regard to the various opinions and policy considerations stated in the communications noted in the paragraphs above.

32. After the enactment of legislation, communications by those to be affected by the legislation have no bearing on the meaning of the statute.

33. PAD is statutorily required under Neb. Rev. Stat. § 77-1330(1) to "prepare, issue, and annually revise *guides* for county assessors in the form of property tax laws, rules, regulations, manuals, and directives."³⁰ Neither Scott's email nor Sorensen's letter to the Platte County Board reasonably constitute such "guides" for county assessors as contemplated by the statute since they were neither laws, rules, regulations, manuals, or directives.³¹ The same is true of the presentation by PAD to County Assessors prior to January 1, 2020.

34. It is patently obvious that none of these communications were laws, rules, or regulations, and so no further discussion is needed on that point.

35. Directives issued by the PTA are clearly styled as a Directive and signed by the PTA for the Tax Commissioner of the Department of Revenue. See, <https://revenue.nebraska.gov/PAD/legal-information/directives>. The Commission is aware of only one applicable document published by the PTA titled Manual, and that is the Nebraska County Assessor's Reference Manual (Reference Manual).

36. The commission finds that the communications discussed above cannot reasonably be construed as constituting a Directive or a Manual as

²⁹ See, Case Files.

³⁰ Neb. Rev. Stat. § 77-1330(1) (Reissue 2018) (emphasis added).

³¹ Directives issued by the PTA are clearly styled as a Directive and signed by the PTA for the Tax Commissioner of the Department of Revenue. See, <https://revenue.nebraska.gov/PAD/legal-information/directives>. No Directive relating to LB 372 had been issued by the PTA at any time relevant to these proceedings.

contemplated by Neb. Rev. Stat. § 77-1330(1). Further, the Commission is aware of no Directive relating to LB 372, or any mention of LB 372 in the Reference Manual at any time relevant to these proceedings.

37. Having found that the communications discussed above were not made under the authority of Neb. Rev. Stat. § 77-1330(1), we conclude that the County Assessor was not legally bound to follow the suggestions of the PTA, which were made without statutory authority and for the express purpose of “avoiding increases to agricultural land because the current market for the majority of the state is flat to declining.”
38. Therefore, it was reasonable for the County Assessor to not follow the suggestions discussed above that were made by PAD.
39. The Taxpayer’s assertions that agricultural land was overassessed were made in reliance upon the numerous communications after the enactment of LB 372 involving PAD³² and the County Board,³³ as discussed above.
40. When statutory language is plain and unambiguous, no interpretation is needed to ascertain the statute’s meaning.”³⁴ Nor will the Commission read meaning into a statute that is not there or read any plain and direct language out of a statute.³⁵
41. Ordinarily, when construing statutes, we should look no further than the plain text. But we may inquire into legislative history when a statute is open to construction because its terms require interpretation or may reasonably be considered ambiguous.³⁶
42. In this case, since we construe the statutory language as being unambiguous, no further inquiry into legislative intent is necessary or appropriate.
43. The Commission does not rely upon communications after the enactment of the legislation as a means of interpreting the text of Neb. Rev. Stat. § 77-1363 as amended by LB 372.
44. “[I]nquiries into legislative motives are a hazardous matter.”³⁷ The words of the statute are what is to be construed, not the motives of administrative agencies or interested parties.
45. The Commission is not bound to interpret the statute as it is interpreted by the PTA. Further, we regard the communications and assertions made by PAD and the PTA in this case regarding the actual value of the Subject

³² The Property Tax Administrator (PTA) is the chief administrative officer of the division. Neb. Rev. Stat. § 77-701(1). At all times relevant to these proceedings, Ruth Sorensen was the PTA.

³³ Each of these documents may be found in the case file.

³⁴ *State Bd. of Ag. v. State Racing Comm.*, 239 Neb. 762, 767, 478 N.W.2d 270, 273 (1992); *State v. Woods*, 255 Neb. 755, 763-64, 587 N.W.2d 122, 128 (1998).

³⁵ See *State v. Taylor*, 310 Neb. 376, 384, 966 N.W.2d 510, 517 (2021).

³⁶ *Salem Grain Co. v. City of Falls City*, 302 Neb. 548, 564, 924 N.W.2d 678, 692 (2019).

³⁷ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. __ (2022).

Property as having no probative value in the determinations of actual value of the Subject Property in these appeals.

The County Assessor’s Application of LB 372

- 46. Placzek stated 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.³⁸
- 47. As a result of the soil types and LCG’s provided by PAD to the County Assessor, the Subject Property had several LCGs reclassified from tax year 2019 to Tax year 2020.
- 48. The soil classification changes for the Subject Property from 2019 to 2020 were as follows:

Case No.	Soil Type	2019 LCG	2020 LCG
20A 0139	6508	2A1	1A
20A 0139	6701	3A1	2A
20A 0139	6508	2D1	1D
20A 0139	6701	3D1	2D
20A 0139	6508	N/A ³⁹	1G1

- 49. Thus, in the tax year 2020 assessment of the Subject Property, 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.
- 50. Therefore, we find that by using the soil types and LCG classifications as directed by PAD, the County Assessor’s actions were consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended.
- 51. As noted above, before tax year 2020, the regulation required that LCG’s be based upon the dryland cropland capability classification,⁴⁰ 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 2020.⁴¹

³⁸ The spreadsheet was provided to Placzek by PAD sometime prior to March 19, 2020.

³⁹ On the 2019 Property Record File, no acres of soil type 6508 were classified as grassland.

⁴⁰ 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.

⁴¹ “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.

52. As a matter of statutory interpretation, we find that while the regulation has the force and effect of statutory law,⁴² the more recent statute conflicts with the requirements of the regulation on the same subject matter.⁴³ As such, the more recent statute controls.⁴⁴ After following this rule of statutory construction, we simply give the statutory language its “plain and ordinary meaning”⁴⁵ and conclude that the methodology followed by the County Assessor and affirmed by the County Board was consistent with the requirements of Neb. Rev. Stat. § 77-1363, as amended.

53. The Commission finds the Taxpayer offered no persuasive evidence that the County Board decision made on July 14, 2020, which relied upon the County Assessor’s actions and was consistent with the assessment done by the County Assessor, was arbitrary or unreasonable.

The County Assessor’s Use of Qualified Sales

54. For tax year 2020, the County Assessor utilized agricultural sales in the three years prior to the effective date of January 1, 2020.⁴⁶ For market area 3, there were 8 qualified sales.⁴⁷ 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. These per acre values are reported in 2020 Reports & Opinions of the Property Tax Administrator, April 2020.⁴⁸

55. The three-year period for market area 3 included eleven sales for tax year 2019.⁴⁹ The per acre values for each LCG for tax year 2019 are reported in 2019 Reports & Opinions of the Property Tax Administrator, April 2019.

56. Sales from October 1, 2015, to September 30, 2016, were used for tax year 2019 but not for tax year 2020. Sales from October 1, 2016, to September 30, 2018, were used for both tax years 2019 and 2020. Sales from October 1,

⁴² “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).

⁴³ *Bergan Mercy Health Sys. v. Haven*, 260 Neb. 846, 859-60, 620 N.W.2d 339, 349 (2000).

⁴⁴ See, *Mauler v. Pathfinder Irr. Dist.* 244 Neb. 217, 219, 505 N.W.2d 691, 693 (1993).

⁴⁵ *In re Adoption of Yasmin S.*, 308 Neb. 771, 774, 956 N.W.2d 704, 706 (2021).

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ See, page 33, Platte County 2020 Average Acre Value Comparison, showing the Market Area 3 assessed values for each of the 8 LCG’s for irrigated cropland, dryland cropland, and grassland.

⁴⁹ For tax year 2019, the three-year period began October 1, 2015, and ended September 30, 2018. See, Title 350 Neb. Admin. Code, Chapter 17, Section 003.05C, Revised 07/05/2017. See also, 2019 Reports & Opinions of the Property Tax Administrator, Platte County, pages 15-17, and 27-28, from the Statewide Equalization Proceedings for tax year 2019.

2018, to September 30, 2018, were used for tax year 2020 but not for tax year 2019.

- 57. As a result, the values per acre for tax year 2020 for each of the 8 LCG's in market area 3 for irrigated cropland, dryland cropland, and grassland were not the same as they were for tax year 2019.
- 58. Placzek stated he applied the values per acre for each LCG consistently for all agricultural parcels in market area 3 including the Subject Property.
- 59. As a result, the following chart shows the average acre value comparison for Platte County Market Area 3, as applied by the County Assessor to each parcel of agricultural land and horticultural land:⁵⁰

1A1	1A	2A1	2A	3A1	3A	4A1	4A
\$6,398	\$6,100	\$5,563	\$5,194	\$4,900	\$4,461	\$4,100	\$3,650
1D1	1D	2D1	2D	3D1	3D	4D1	4D
\$5,200	\$5,050	\$4,779	\$4,700	\$4,363	\$3,978	\$3,301	\$2,800
1G1	1G	2G1	2G	3G1	3G	4G1	4G
\$1,393	\$1,326	\$1,300	\$706	1,200	\$1,124	\$1,098	\$1,037

- 60. The Commission finds that the assessment practices employed by Placzek were reasonable, and the County Board's reliance on them in making its decision on July 14, 2020, was not arbitrary or unreasonable. The Taxpayer offered no persuasive evidence otherwise.

Conclusions of Law

- 61. 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 in its decision on July 14, 2020.
- 62. The Taxpayer has not adduced clear and convincing evidence that the decision made by the County Board on July 14, 2020, was arbitrary or unreasonable, and that decision of the County Board should be affirmed.

ORDER

- 63. The decision made by the Platte County Board of Equalization on July 14, 2020, determining the taxable value of the Subject Property for tax year 2020 is affirmed.
- 64. The taxable value of the Subject Property for tax year 2020 is \$899,435.

⁵⁰ Reports & Opinions of the Property Tax Administrator 2020, Platte County Average Acre Value Comparison

65. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
66. Any request for relief by any party which is not specifically provided for by this Decision and Order is denied.
67. Each party is to bear its own costs in this proceeding.
68. This Decision and Order shall only be applicable to tax year 2020.
69. This Decision and Order is effective on March 22, 2023.

Signed and Sealed: March 22, 2023

Seal

Robert W. Hotz, Commissioner