

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

REL-LEUM INC.  
APPELLANT,

V.

PLATTE COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NOS: 20A 0141, 20A  
0142, 20A 0143, 20A 0144, 20A  
0145, 20A 0146, 20A 0147

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

**For the Appellant:**  
Brett Mueller, Vice-President  
Rel-Leum Inc.

**For the Appellee:**  
Carl K. Hart  
Platte County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn on December 13, 2022. Commissioner Hotz presided.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of seven distinct agricultural land parcels located in Platte County, Nebraska. The legal description and Property Record File (PRF) for each of the Subject Properties is found at Exhibits 9, 11, 13, 15, 17, 37, and 38.

**II. PROCEDURAL HISTORY**

The chart below shows the Case No., the assessed value as determined by the Platte County Assessor (the Assessor), the

assessment requested by Rel-Leum Inc. (the Taxpayer) at the time of the tax year 2020 protest, and the taxable value as determined by the Platte County Board of Equalization (the County Board) after a protest hearing for each of the seven appeals in this consolidated proceeding.

<b>Case No.</b>	<b>Assessed Value</b>	<b>Taxpayer Request</b>	<b>County Board Value</b>
20A 041	\$472,155	\$350,982	\$472,155 <sup>1</sup>
20A 042	\$602,830	\$457,290	\$602,830 <sup>2</sup>
20A 043	\$340,800	\$271,385	\$340,800 <sup>3</sup>
20A 044	\$789,850	\$623,915	\$789,850 <sup>4</sup>
20A 045	\$1,208,515	\$996,773	\$1,208,515 <sup>5</sup>
20A 046	\$601,890	\$473,269	\$601,890 <sup>6</sup>
20A 047	\$910,575	\$695,943	\$910,575 <sup>7</sup>

The Taxpayer appealed the protest decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. At the hearing, Exhibits 1 to 41 were admitted into evidence.

### **III. STANDARD OF REVIEW**

The Commission’s review of the County Board’s determination is de novo.<sup>8</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Exhibit 7.

<sup>8</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>9</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>10</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>11</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>12</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>13</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>14</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all

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<sup>9</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>10</sup> *Id.*

<sup>11</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>12</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>13</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>14</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>15</sup> The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>16</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>17</sup>

#### IV. APPLICABLE VALUATION LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>18</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.”<sup>19</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>20</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and

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<sup>15</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>20</sup> *Omaha Country Club* at 180, 829.

has the same meaning as assessed value.<sup>21</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>22</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>23</sup>

## V. VALUATION OF AGRICULTURAL LAND

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>24</sup>

Agricultural land and horticultural land, shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. *Land capability groups<sup>25</sup> shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion.* 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. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county

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<sup>21</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>22</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>23</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>24</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

<sup>25</sup> 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 (emphasis added).

assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.<sup>26</sup>

## VI. FINDINGS OF FACT

The primary issue in these appeals is the Taxpayer's assertion that legislation enacted in 2019, LB 372, was improperly applied to determine the taxable value of the Subject Properties for tax year 2020.<sup>27</sup>

### A. 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."<sup>28</sup> 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 land<sup>29</sup> is a distinct class of real property and is divided into multiple subclasses.<sup>30</sup> Irrigated cropland, dryland cropland, and grassland are the most predominant use subclasses of agricultural land.

To properly assess a parcel of agricultural land, county assessors analyze each acre of the parcel. Fundamental to this analysis is identifying soil types. The process of identifying and analyzing soil types, and their ultimate productivity when put into either irrigated cropland, dryland cropland, or grassland uses, starts with information from the United States Department Agriculture, Natural Resources Conservation Service (NRCS). The NRCS assigns each soil type with a

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<sup>26</sup> Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020) (emphasis added).

<sup>27</sup> 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.

<sup>28</sup> LB 372, §1, and italicized above as codified in Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020).

<sup>29</sup> Hereinafter referred to as "agricultural land."

<sup>30</sup> Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

four-digit code and provides the soil type codes to the Property Assessment Division (PAD) of the Nebraska Department of Revenue.<sup>31</sup> PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.<sup>32</sup> 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:

<b>Irrigated</b>	1A1	1A	2A1	2A	3A1	3A	4A1	4A
<b>Dry</b>	1D1	1D	2D1	2D	3D1	3D	4D1	4D
<b>Grass</b>	1G1	1G	2G1	2G	3G1	3G	4G1	4G

Soils that are used for irrigated cropland are included under the designation "A." Soils used for dryland cropland are designated with a "D," and soils used for grassland are designated as "G." Soils deemed to be most productive are classified as 1A1, 1D1, and 1G1. Soils deemed to be least productive are classified as 4A, 4D, and 4G. All acres used for irrigated cropland, dryland cropland, and grassland are classified under one of these LCG's.

PAD provides the soil classifications for each county to each county assessor. Each county assessor is then required to utilize the soil surveys as directed by the Property Tax Administrator (PTA) of PAD.<sup>33</sup>

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.<sup>34</sup> For example, soil type 6703, when used as dryland cropland, was classified as LCG 3D,

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<sup>31</sup> An example of this can be seen in the third column of Exhibit 36, labeled "soil."

<sup>32</sup> An LCG is defined as, "a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management." Title 350 Neb. Admin. Code, Chapter 14, Section 004.08E, Revised 3/15/09.

<sup>33</sup> Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020) ("County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator.").

<sup>34</sup> "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.

with a productivity level of 3.<sup>35</sup> PAD then relied upon the dryland cropland capability classification for soil type 6703 to also classify the irrigated cropland and the grassland at the productivity level of 3, 3A, and 3G, 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.<sup>36</sup> This is illustrated in Exhibit 36 in the fifth column, labeled “dry,” and hand-labeled “Previous.” For example, soil type 6703 is designated under dryland cropland, or “Dry,” as 3D. The same soil type is then designated under irrigated cropland, or “Irr,” as 3A, and under grassland, or “Grass,” as 3G.

### **B. 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, for tax year 2020, soil type 6703 when used as dryland cropland was designated as 3D1, when used as irrigated cropland was 3A1, but when used as grassland was 1G1. These are each shown in the “Dry,” “Irr,” and “Grass” columns under the handwritten “New” columns of Exhibit 36. For tax year 2020, PAD directed the County Assessor to use these classifications for the assessment of agricultural land in Platte County.

### **C. Agricultural Assessments by the Platte County Assessor for Tax Year 2020**

Tom Placzek, the Platte County Assessor, testified that he had been directly involved in the assessment of the Subject Properties for both

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<sup>35</sup> See, Exhibit 13:3 and Exhibit 36. We are using the term “productivity level” to identify the numeral within each LCG.

<sup>36</sup> See, Title 350 Neb. Admin. Code, Chapter 14, Section 002.41.



tax years 2019 and 2020. Placzek testified that the reclassification of soil types and LCG's from tax year 2019 to tax year 2020 was one factor in the change of values for many agricultural properties that were located in the same market area as the Subject Properties.<sup>37</sup> He also testified that two other factors had an effect on tax year 2020 values: the correction of acre measurements by soil type, and the application of market information from seven sales. We take up each of these three factors in turn.

### **1. The County Assessor Correctly Applied Soil Type and LCG Classifications**

Placzek testified 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, as shown in Exhibit 36. The Commission notes that approximately 80 different soil types were included in the spreadsheet. Per the PRF's, the Subject Properties contained 10 of these soil types with at least one of the uses of irrigated cropland, dryland cropland, or grassland, where the 2020 productivity level was different from the 2019 productivity level.<sup>38</sup> These soil types, the "Previous" year (2019) classifications, and the "New" year (2020) classifications are shown in the chart below:

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<sup>37</sup> The Subject Properties were all located in market area 3, an area generally between the Loup River and the Platte River. See Exhibits 9:2, 11:2, 13:2, 15:4, 17:4, 37:1, and 38:1. The County Assessor utilized two market areas to assess agricultural land in Platte County, market area 3 and market area 6. See, 2020 Reports & Opinions of the Property Tax Administrator, Exhibit 71, page 34, from the Statewide Equalization Proceedings for Tax year 2020.

<sup>38</sup> See, Exhibits 9:3 and 9:2, 11:3 and 11:2, 13:3 and 13:2, 15:5 and 15:4, 17:5 and 17:4, 37:1 and 37:2, and 38:1 and 38:2.

	Previous	Previous	Previous	New	New	New
Soil	Dryland	Irrigated	Grassland	Dryland	Irrigated	Grassland
4654		3A			3A1	
4807			4G			3G1
4886	4D1		4G1	4D		2G1
6508	2D1	2A1		1D	1A	
6525		2A1			1A	
6637	3D1	3A1	3G1	2D	2A	2G1
6701	3D1	3A1		2D	2A	
6703	3D	3A	3G	3D1	3A1	1G1
8470		2A			2A1	
8530		2A			2A1	

Based upon these soil types and LCG's provided by PAD to the County Assessor, as shown in Exhibit 36, each of the seven Subject Properties had at least one LCG reclassified from tax year 2019 to Tax year 2020. In two of the seven Subject Properties (20A 0143 and 20A 0144) at least one LCG from all three uses of irrigated cropland, dryland cropland, and grassland were reclassified.

Arrayed as applied to each Subject Property, the soil classification changes from 2019 to 2020 were as follows:

Case No.	Soil Type	2019 LCG	2020 LCG	Exhibits
20A 0141	6508	2A1	1A	9:2-3
20A 0141	6701	3A1	2A	9:2-3
20A 0142	4654	3A	3A1	11:2-3
20A 0142	8470	2A	2A1	11:2-3
20A 0142	8530	2A	2A1	11:2-3
20A 0143	6637	3A1	2A	13:2-3
20A 0143	6701	3A1	2A	13:2-3
20A 0143	6703	3A	3A1	13:2-3
20A 0143	4886	4D1	4D	13:2-3
20A 0143	6637	3D1	2D	13:2-3
20A 0143	6701	3D1	2D	13:2-3
20A 0143	6703	3D	3D1	13:2-3
20A 0143	4886	4G1	2G1	13:2-3

<b>Case No.</b>	<b>Soil Type</b>	<b>2019 LCG</b>	<b>2020 LCG</b>	<b>Exhibits</b>
20A 0141	6508	2A1	1A	9:2-3
20A 0141	6701	3A1	2A	9:2-3
20A 0143	6637	3G1	2G1	13:2-3
20A 0143	6703	3G	1G1	13:2-3
20A 0144	6701	3A1	2A	15:4-5
20A 0144	6703	3A	3A1	15:4-5
20A 0144	4886	4D1	4D	15:4-5
20A 0144	6701	3D1	2D	15:4-5
20A 0144	6703	3D	3D1	15:4-5
20A 0144	4807	4G	3G1	15:4-5
20A 0144	4886	4G1	2G1	15:4-5
20A 0144	6637	3G1	2G1	15:4-5
20A 0144	6703	3G	1G1	15:4-5
20A 0145	6525	2A1	1A	17:4-5
20A 0145	8470	2A	2A1	17:4-5
20A 0145	8530	2A	2A1	17:4-5
20A 0146	8470	2A	2A1	37:1-2
20A 0147	6508	2A1	1A	38:1-2
20A 0147	6701	3A1	2A	38:1-2
20A 0147	6508	2D1	1D	38:1-2
20A 0147	6701	3D1	2D	38:1-2

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 36, 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,<sup>39</sup> 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.<sup>40</sup>

As a matter of statutory interpretation, we find that while the regulation has the force and effect of statutory law,<sup>41</sup> the more recent statute conflicts with the requirements of the regulation on the same subject matter.<sup>42</sup> As such, the more recent statute controls.<sup>43</sup> After following this rule of statutory construction, we simply give the statutory language its “plain and ordinary meaning”<sup>44</sup> 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.

The Taxpayer offered no persuasive evidence that the County Board determinations, which relied upon the County Assessor’s actions and were consistent with the assessments done by the County Assessor, were arbitrary or unreasonable.

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<sup>39</sup> 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.

<sup>40</sup> “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.

<sup>41</sup> “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).

<sup>42</sup> *Bergan Mercy Health Sys. v. Haven*, 260 Neb. 846, 859-60, 620 N.W.2d 339, 349 (2000).

<sup>43</sup> See, *Mauler v. Pathfinder Irr. Dist.* 244 Neb. 217, 219, 505 N.W.2d 691, 693 (1993).

<sup>44</sup> *In re Adoption of Yasmin S.*, 308 Neb. 771, 774, 956 N.W.2d 704, 706 (2021).

## **2. The County Assessor Properly Applied Corrected Acre Measurements of Agricultural Land that Resulted in Changes From Tax Year 2019 to Tax Year 2020**

Placzek also properly included corrected acre measurements in the tax year 2020 PRF's. This was done with the parcels in Case Nos. 20A 0143,<sup>45</sup> 20A 0145,<sup>46</sup> and 20A 0147.<sup>47</sup> Placzek testified these corrections were made in the normal course of assessment practices. He stated that such changes generally resulted from geographic information system (GIS) mapping. In Case No. 20A 0145, the number of irrigated cropland acres changed between soil types,<sup>48</sup> and in Case No. 20A 0147, the acre counts for both irrigated cropland and dryland cropland changed by small amounts from tax year 2019 to tax year 2020. In Case No. 20A 0143, .65 waste acres were identified in tax year 2020, at an assessed value of \$100 per acre, which had been assessed as irrigated cropland, dryland cropland, or grassland for tax year 2019.<sup>49</sup>

We find that these assessment practices were reasonable, and the County Board's reliance on them was not arbitrary or unreasonable. The Taxpayer offered no persuasive evidence otherwise.

## **3. The County Assessor Properly Considered Market Data From Seven Qualified Sales to Determine the Value Per Acre for Each LCG in Market Area 3**

For tax year 2020, the County Assessor utilized agricultural sales in the three years prior to the effective date of January 1, 2020.<sup>50</sup> For market area 3, there were 8 qualified sales.<sup>51</sup> The County Assessor

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<sup>45</sup> See, Exhibits 13:3 and 13:2.

<sup>46</sup> See, Exhibits 17:5 and 17:4.

<sup>47</sup> See, Exhibits 38:1 and 38:2.

<sup>48</sup> See, Exhibits 17:5 and 17:4.

<sup>49</sup> See, Exhibits 13:3 and 13:2.

<sup>50</sup> 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.

<sup>51</sup> 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.

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 shown in Exhibit 20, as prepared by the County Assessor. The three-year period for market area 3 sales analyzed for tax year 2019 included 11 sales.<sup>52</sup> The per acre values for each LCG for tax year 2019 are shown at Exhibit 21.

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, 2018, to September 30, 2018, were used for tax year 2020 but not for tax year 2019. 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, as can be seen in Exhibits 20 and 21.

Placzek testified he applied the values per acre for each LCG consistently for all agricultural parcels in market area 3 including all of the Subject Properties. We find that these assessment practices were reasonable, and the County Board's reliance on them was not arbitrary or unreasonable. The Taxpayer offered no persuasive evidence otherwise.

#### **D. Improper Actions Taken by the County Board and by PAD that Affected the Protest and Appeal Process**

We include this subsection in an attempt to provide clarity and completeness to the record relating to these appeals. The County Board's communications to the Taxpayer included two contrary positions which appeared to cause confusion for the Taxpayer.<sup>53</sup> For each Subject Property, only one decision is on appeal in these

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<sup>52</sup> 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.

<sup>53</sup> See, Exhibit 8:5-7. The County Board decisions affirming the assessments for all seven appeals were mailed to the Taxpayer on July 24, 2020. Two weeks later, on August 7, 2020, the County Board sent letters to the Taxpayer regarding all seven appeals stating the Board, "is on your side regarding your June tax protest." Exhibits 1-7, 8:9.

proceedings, as described above. But, after giving notice to the Taxpayer of that decision for each appeal,<sup>54</sup> the County Board soon after sent another communication to the Taxpayer stating a contrary point of view.<sup>55</sup>

Placzek testified that after PAD provided him with LCG's, after he had provided notices of assessed values to the Taxpayer for tax year 2020, and after the Taxpayer had filed protests for each property, all as described above, PAD provided Placzek with valuation options for some of the LCG's that had been affected by the requirements of LB 372.<sup>56</sup> Among the options outlined was a suggestion on June 29, 2020, that "dryland and irrigated LCGs with a significant value change" could be "spotted back to the prior year classification."<sup>57</sup> This included soil types 6754, 6812, and 8476 for Platte County.

It is noteworthy to this discussion, and Placzek emphasized the point in his testimony, that none of the Taxpayer's Subject Properties contained any acres of 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 Properties. Placzek testified that he interpreted the June 29, 2020, communication, and a meeting with PAD that preceded it, as a suggestion that he should not follow the requirements of LB 372 because by doing so some parcels would have increases in their overall assessments.

During the same time period, PAD made similar communications to the County Board. The June 29, 2020, communication from PAD to Placzek was also provided by PAD to the County Board Chairperson, Jerry Engdahl, after its July 14, 2020, protest decisions affirming the

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<sup>54</sup> Exhibits 1-7.

<sup>55</sup> Exhibit 8:9.

<sup>56</sup> Exhibit 8:11 includes a copy of a June 29, 2020, email from PAD's Field Operations Manager, Sarah Scott, to Placzek outlining per acre valuation options and suggestions. It is important to note that this communication was made more than one year after the Governor approved LB 372.

<sup>57</sup> *Id.*

assessments.<sup>58</sup> Additionally, in a letter to County Board Chairperson Engdahl, dated July 9, 2020, the PTA, Ruth Sorensen, summarized the process PAD followed after the codification of LB 372, and then stated, “County Assessors were encouraged 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.”<sup>59</sup> As explained above, Placzek testified that he refused to make adjustments to the LCGs that were originally provided to him by PAD. In response to Placzek’s actions, Sorensen’s July 9, 2020, letter concluded, “This is unfortunate, as affected agricultural landowners will bear a disproportionate tax burden without corrective action.”<sup>60</sup>

Placzek testified that he disagreed with the corrective actions that were being advocated by the PTA because he believed he was being discouraged from following the requirements of LB 372. Specifically, he stated that he refused to assess market area 3 using the majority of the state as the basis, as suggested by the PTA. He asserted the assessments for Platte County should not be based upon generalized statewide sales statistics.

Placzek was correct. The PTA’s corrective actions, as suggested in emails and letters, were not authorized or required by Neb. Rev. Stat. § 77-1330 as they did not constitute laws, rules, regulations, manuals, or directives.<sup>61</sup> In each of PAD’s communications to the County Assessor and the County Board, the record clearly indicates that PAD was advocating for assessments that would result in certain desired assessment outcomes. In this context, the suggestion to “spot back” an

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<sup>58</sup> Exhibit 8:10.

<sup>59</sup> Exhibit 8:11.

<sup>60</sup> Exhibit 8:12. It should be noted it is irrelevant to these proceedings whether the PTA’s assertions were true. Any relevance to this proceeding is limited to provide clarification to the actions of the parties in response to those assertions.

<sup>61</sup> “The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the materials in the performance of their duties....” Neb. Rev. Stat. § 77-1330(1) (Reissue 2018).



LCG classification would be contrary to the express requirements of LB 372. To read the statute otherwise would be to give LB 372 no effect.

Thus, while we have noted the actions taken by PAD and by the County Board, as described in Part VI, Section D, of this Order, we do not suggest they were the basis for the County Board's initial protest decisions that are the subject of this appeal. Thus, while these actions were improper, they have no probative value in our determinations relating to the decisions of the County Board that are being considered in these appeals.

## VII. CONCLUSIONS OF LAW

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

For the reasons set forth above, the determinations of the County Board under review in these appeals should be affirmed.

## VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Platte County Board of Equalization determining the taxable values of the Subject Property for tax year 2020 are affirmed.
2. The taxable values of the Subject Properties for tax year 2020 are as follows:

<b>Case No.</b>	<b>Taxable Value Land</b>	<b>Taxable Value Improvement</b>	<b>Total Taxable Value</b>
20A 041	\$472,155	N/A	\$472,155

20A 042	\$602,830	N/A	\$602,830
20A 043	\$340,800	N/A	\$340,800
20A 044	\$572,105	\$217,745	\$789,850
20A 045	\$845,360	\$363,155	\$1,208,515
20A 046	\$601,890	N/A	\$601,890
20A 047	\$910,575	N/A	\$910,575

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Platte County Treasurer and the Platte 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 year 2020. This Decision and Order is effective for purposes of appeal on February 22, 2023.<sup>62</sup>

Signed and Sealed: February 22, 2023

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

<sup>62</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.