

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

BRETT A. MUELLER
APPELLANT,

CASE NOS: 20A 0148, 20A
0149, 20A 0150

V.

PLATTE COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property consists of agricultural parcels in Platte County, parcel number 710030023, 710012439, and 71015225.
2. The Platte County Assessor (the County Assessor) assessed the Subject Properties as below:

Case No.	Parcel ID	Assessed Value
20A 0148	710030023	\$431,295
20A 0149	710012439	\$401,740
20A 0150	71015225	\$616,050

3. Brett A. Mueller (the Taxpayer) protested these values to the Platte County Board of Equalization (the County Board) and requested assessed values of \$350,000, \$316,997, and \$465,975, respectively, for tax year 2020.
4. The County Board determined that the taxable values of the Subject Properties were \$431,295, \$401,740, and \$616,050, respectively, for tax year 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

6. A Single Commissioner hearing was held on **December 13, 2022**, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Brett A. Mueller was present at the hearing for the Taxpayer.
8. Carl Hart was present for the County Board.

II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
11. When considering an appeal, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the

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

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

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

⁴ *Id.* at 283-84.

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. 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 2020.⁹

Agricultural Assessments Prior to Tax Year 2020

17. 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."¹⁰ Our decision in this

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

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

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

⁹ 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.

¹⁰ LB 372, §1, and italicized above as codified in Neb. Rev. Stat. § 77-1363 (2020 Cum. Supp.).

appeal is primarily based on our understanding of the effect this language has on the taxable value of agricultural land starting in tax year 2020.

18. Under Nebraska law, agricultural land and horticultural land¹¹ is a distinct class of real property and is divided into multiple subclasses.¹² Irrigated cropland, dryland cropland, and grassland are the most predominant use subclasses of agricultural land.
19. To properly assess a parcel of agricultural land, county assessors must 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 four-digit code and provides the soil type codes to the Property Assessment Division (PAD) of the Nebraska Department of Revenue.¹³ PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.¹⁴ This soil conversion process conducted by PAD includes multiple soil types in each of these

¹¹ Hereinafter referred to as “agricultural land.”

¹² Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

¹³ An example of this can be seen in the third column of Exhibit 36, labeled “soil.”

¹⁴ 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.

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

20. 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.¹⁵
21. 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.¹⁶ For example, soil type 6703, when used as dryland cropland, was classified as LCG 3D, with a productivity level of 3.¹⁷ 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.
22. PAD directed assessors to use for each soil type the same productivity level that was designated for dryland cropland for

¹⁵ Neb. Rev. Stat. § 77-1363 (2020 Cum. Supp.) ("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.").

¹⁶ "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.

¹⁷ See, Exhibit 13:3 and Exhibit 36. We are using the term "productivity level" to identify the numeral within each LCG.

both irrigated cropland and grassland.¹⁸ 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.

Agricultural Assessments for Tax Year 2020

23. As a result of the enactment of LB 372, this changed. Rather than designating the irrigated cropland and grassland productivity levels at the same level as 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.
24. Tom Placzek, the Platte County Assessor, testified that he had been directly involved in the assessment of the Subject Properties for both 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 only one factor in the change of values for many agricultural properties that were located in the same market area as the Subject Properties.¹⁹ Other factors

¹⁸ See, Title 350 Neb. Admin. Code, Chapter 14, Section 002.41.

¹⁹ The Subject Properties were all located in market area 3, an area generally between the Loup River and the Platte River. 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.

included correction of acreage measurements by soil type and the application of market information.

25. The County Assessor's use of the soil type and LCG classifications as directed by PAD 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,²⁰ 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 2020.²¹
26. 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.
27. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated/affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable values of the Subject Properties for tax year 2020 is affirmed.
2. The taxable values of the Subject Properties for tax years 2020 are:

Case No.	Parcel ID	Land Value	Imp. Value	Total Value
20A 0148	710030023	\$431,295	\$0	\$431,295

²⁰ 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.

²¹ "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.

20A 0149	710012439	\$379,385	\$22,355	\$401,740
20A 0150	71015225	\$616,050	\$0	\$616,050

3. 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).
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.
7. This Decision and Order is effective on February 10, 2023.

Signed and Sealed: February 10, 2023



James D. Kuhn, Commissioner