

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

MARK A. CASPERS
APPELLANT,

CASE NO: 20A 0155

V.

SAUNDERS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is a 40-acre agricultural parcel in Saunders County, Nebraska, identified as parcel number 000600000.
2. The Saunders County Assessor (the County Assessor) assessed the Subject Property at \$160,365 for tax year 2020. The assessment classified each of the 40 acres as dryland¹ or treed² acres.
3. Mark A. Caspers (the Taxpayer) protested this value to the Saunders County Board of Equalization (the County Board) and requested an assessed value of \$72,618 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$160,365 for tax year 2020.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

¹ “Dryland cropland is land that is primarily used for crop production without irrigation. Dryland Cropland includes all cultivated row crops, small grains, and seeded hay and forage crops grown under dryland conditions.” Title 42, NAC, Chapter 14, §002.21A.

² “Tree Canopy-Land with less than thirty-five (35) percent tree canopy should be classified as grassland. A market analysis will demonstrate if any adjustments are needed. Some soil mapping units consider tree canopy as typical and this has been considered when classifying the land into LCG’s. A determination will need to be made whether tree canopy along rivers and streams is used as agricultural land, timberland, or recreational land.” Title 42, NAC, Chapter 14, §006.04A.

6. A Single Commissioner hearing was held on November 2, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Mark Caspers was present at the hearing.
8. Jennifer Joakim, Saunders County Attorney, Darren Hartman, Deputy Saunders County Attorney, and Rhonda Andresen, Saunders County Assessor were 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 1.³
10. The Commission's review of a determination of the County Board of Equalization is de novo.⁴
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."⁵ 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."⁶

³ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

⁴ 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).

⁵ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁶ *Id.* at 283-84.

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁷
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.⁹
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property sold November 14, 2017, for \$200,000, and again May 23, 2019, for \$210,000. The tax year 2020 assessment for the Subject Property on the effective date of January 1, 2020, was \$160,365.
17. The Taxpayer alleges the Subject Property is not equalized with another agricultural parcel within the same market area. The Taxpayer refers to this comparable property as the Scott Property.
18. The Scott property consisted of 120 acres consisting of dryland, treed acres, and waste acres. The Taxpayer asserts that a 76.75 acre lake on the Scott property is classified as waste acres. The Scott property sold for \$540,000 August 11, 2016, and for \$521,300 April 24, 2020. The tax year 2020 assessment for the Scott property on the effective date of January 1, 2020, was \$175,805.

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁹ *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).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. The Taxpayer asserts, based on the 2020 sale price, the Scott property was assessed at about 35% of its value. The Taxpayer asserts this differential between the sales price and the assessed value is because the lake is a Natural Resources District (NRD) lake which the Taxpayer asserts has significantly higher value than it is assessed. Other than his assertion, the Taxpayer provided no information to quantify the contribution of value of the 76.75 acre lake to the Scott property.
20. Rhonda Andresen, Saunders County Assessor, testified that the Scott property is not being used for any other purpose, such as for recreational purposes, that would warrant the classification of the 76.75 acres as anything other than as waste.
21. The Taxpayer does not dispute the per acre values of the other acres on either property as classified by Land Capability Groupings (LCG),¹¹ also known as Land Valuation Groups (LVGs).
22. The table below demonstrates that, for the seven LVGs common to the Subject Property and the Scott property, the assessed values per acre match – indicating these acres are properly equalized.

LVG Soil Type	Subject Property Rate	Scott Property Rate
1D 7231	\$5,290.00	\$5,290.00
4T 7868	\$600.00	\$600.00
3D 8125	\$4,130.00	\$4,130.00
4D 8119	\$3,190.00	\$3,190.00
2D1 7750	\$5,280.00	\$5,280.00
4D 7868	\$3,190.00	\$3,190.00
4T1 8119	\$600.00	\$600.00

¹¹ Also known as Land Valuation Groups (LVG). “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 42, Chapter 14, §002.41.

23. The Taxpayer has the burden to demonstrate that the determination of the County Board was arbitrary or unreasonable. The Taxpayer has not provided persuasive evidence to quantify what value or classification ought to be assigned to the 76.75 acres on the Scott property other than wasteland. Without such evidence, the Commission is unable to determine that the County Board's action in assigning the 76.75 Scott property acres as wasteland was arbitrary or unreasonable.
24. 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.
25. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable, and the decision of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

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

Land	\$ 160,365
<u>Improvements</u>	<u>\$ 0</u>
Total	\$ 160,365
3. This Decision and Order, if no further action is taken, shall be certified to the Saunders County Treasurer and the Saunders 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 January 13, 2023.

Signed and Sealed: January 13, 2023



Robert W. Hotz, Commissioner