

**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

**For the Appellant:**

Mark A. Caspers,  
Pro Se

**For the Appellee:**

Jennifer D. Joakim,  
Saunders County Attorney

This appeal was heard before Commissioners Steven A. Keetle and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 40-acre agricultural parcel located in Saunders County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Saunders County Assessor determined that the assessed value of the Subject Property was \$160,365 for tax year 2020. Mark A. Caspers (the Taxpayer) protested this assessment to the Saunders County Board of Equalization (the County Board) and requested a taxable value of \$72,618. The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$160,365.<sup>1</sup>

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<sup>1</sup> Exhibit 1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 31, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 through 11 were admitted into evidence.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>2</sup> 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.<sup>3</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>4</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>5</sup>

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<sup>2</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).

<sup>3</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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>7</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>8</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 questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>9</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>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### 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

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<sup>6</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</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>8</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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>12</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>13</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>14</sup> 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.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.<sup>18</sup> 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

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<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> *Omaha Country Club* at 180, 829.

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

in common ownership or management with other agricultural land and horticultural land.<sup>19</sup>

The Legislature has distinguished agricultural land and horticultural land from other types of real property “by allowing the owners of certain agricultural land and horticultural land (land that meets the qualifications set forth in Neb. Rev. Stat. § 77-1344 (Reissue 2018)) to elect “special valuation,” rather than having their properties valued according to their actual value.”<sup>20</sup> Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.<sup>21</sup> This is in contrast to “actual value,” which takes into account “all the uses to which the real property is adapted and for which the real property is capable of being used.”<sup>22</sup>

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

(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.

(b) Agricultural or horticultural purposes includes the following uses of land:

(i) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

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<sup>19</sup> Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

<sup>20</sup> *Burdess v. Washington Cty. Bd. of Equal.*, 298 Neb. 166, 171, 903 N.W.2d 35, 39 (2017).

<sup>21</sup> Neb. Rev. Stat. § 77-1343(5) (Reissue 2018).

<sup>22</sup> *Burdess v. Washington Cty. Bd. of Equal.*, 298 Neb. 166, 171, 903 N.W.2d 35, 39 (2017) (quoting Neb. Rev. Stat. § 77-112).

<sup>23</sup> Neb. Rev. Stat. § 77-132 (Reissue 2018).

(ii) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production; and

(c) Whether a parcel or land is primarily used for agricultural and horticultural purposes shall be determined without regard to whether some or all of the parcel is platted and subdivided into separate lots or developed with improvements consisting of streets, sidewalks, curbs, gutters, sewer lines, water lines, or utility lines.<sup>24</sup>

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.<sup>25</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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

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<sup>24</sup> Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

<sup>25</sup> *Neb. Const.*, Art. VIII, § 1.

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

<sup>27</sup> *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).

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

<sup>29</sup> *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).

failure of plain legal duty, and not mere errors of judgment.<sup>30</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>31</sup>

## V. FINDINGS OF FACT AND ANALYSIS

### A. Summary of the Evidence

The parties do not dispute how the Subject Property was originally assessed. The dispute is whether the assessed value of the Subject Property is equalized with the assessed value of another agricultural parcel within the same market area. The Taxpayer refers to this comparable property as the Scott property.<sup>32</sup>

The Subject Property is a 40-acre agricultural or horticultural parcel consisting of dryland acres, treed acres, and road acres.<sup>33</sup> The Scott property consisted of 120 acres consisting of dryland, treed acres, road acres, CRP<sup>34</sup> acres, and waste acres. A 76.75-acre lake on the Scott property is classified as waste acres. Both parties agreed the Scott property is an unusual parcel due to the large lake and its high percentage of waste acres.

Rhonda J. Andresen, the Saunders County Assessor (the County Assessor), testified regarding assessments in Saunders County. Waste land in Saunders County is valued at \$135 per acre. The County Assessor testified \$135 had been the value of waste land in the county for at least the last 5 years. While the County Assessor conceded her predecessor was responsible for this value, the County Assessor reviewed the assessed the values of waste land acres in other surrounding counties and determined this per acre value was appropriate. The County Assessor testified she does not have a

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

<sup>31</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>32</sup> Exhibit 5

<sup>33</sup> Exhibit 4

<sup>34</sup> Conservation Reserve Program, See, E5 and 2020 Reports and Opinions of the Property Tax Administrator for Saunders County.

sufficient number of sales of waste acres in order to justify changing this value of waste acres without the new value being arbitrary.

The County Assessor testified the Scott Property is being used for an agricultural use. The County Assessor determined the lake on the Scott property is not being used for any other purpose, such as for recreational purposes, which would warrant reclassification of the 76.75 acres as anything other than as waste.

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. The County Assessor asserted these sales of the Scott property could not be used in the valuation of properties in Saunders County due to a lack of proper documentation stamping. The Taxpayer asserts, based on the 2020 sale price, the Scott property was assessed at approximately 35% of its sale price(s). 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 assessed. The Taxpayer also asserts the Scott property accounts for 2% of all waste acres in Saunders County. The Taxpayer alleged these sales should be used to change the value of waste acres due to the amount of the lake/waste acres on the Scott property.

The Taxpayer presented information from the Sarpy County Assessor's Office web page regarding a parcel in Sarpy County which

contained a large lake.<sup>35</sup> This information shows this parcel had acres classified as dryland acres and site acres.

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.

## **B. Analysis**

The Commission will consider the Taxpayers allegations rephrased into two basic allegations for analysis: the assessed value of the Subject Property was not equalized with the assessed value of the Scott property; and the assessed value of waste acres in Saunders County did not reflect market value for waste acres resulting in dis-equalization between waste acres and all other agricultural or horticultural acres in the county.

### **1. Equalization of Subject Property and Scott Property**

The Taxpayer alleged the assessed values of the Subject Property and the Scott property were not equalized for tax year 2020. The Property Record Files (PRFs) for both the Subject Property and the Scott property have a Land Valuation Summary as well as a table containing the “Department of Revenue Approved Values” showing the per acre values for agricultural land and horticultural land subject to special valuation vary based on the LCG, with the LCGs containing higher productivity soils having higher values.<sup>36</sup>

A Land Capability Group (LCG) is 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.<sup>37</sup> An LCG is determined for each kind of soil and its current land use.<sup>38</sup> For the seven LCGs common to the Subject

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<sup>35</sup> Exhibit 11

<sup>36</sup> See, Exhibit 4:6, Exhibit 5:7

<sup>37</sup> 350 Neb. Admin. Code, ch. 14, § 004.08E (3/09).

<sup>38</sup> 350 Neb. Admin. Code, ch. 14, § 004.08E (3/09).

Property and the Scott property, the assessed values per acre are identical.

## **2. Valuation of Waste Acres**

The Taxpayer alleged the per acre assessed valuation of waste acres in the County are too low based on what the Scott property had recently sold for resulting in dis-equalization between the assessed value of waste acres and all other agricultural or horticultural acres in Saunders County.

The Taxpayer alleged the recent sales prices of the Scott property which sold for \$540,000 on August 11, 2016, and for \$521,300 on April 24, 2020, show the lake acres have a value higher than assessed. It is true the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.<sup>39</sup> Saunders County is subject to Special Valuation which means it does not assess agricultural and horticultural land at the price it could sell for, but instead assessed values are based on what it is used for. The Taxpayer did not present any evidence the lake is being used for anything other than waste acres.

The Taxpayer presented Sarpy County Summary Information for a parcel in Sarpy County he believed to be comparable to the Scott property and was assessed at a significantly higher per acre amount.<sup>40</sup> The Taxpayer testified this parcel in the adjacent county also contained a large lake which was assessed at a higher per acre amount. The Summary Information provided showed the acres the Taxpayer alleged were lake acres, were actually classified as site acres,

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<sup>39</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>40</sup> E11

not as waste acres. The site acres classification indicated the lake acres on the Sarpy County parcel had a use that is not agricultural or horticultural. This difference in classification means this property is not comparable to the Scott Property, which is entirely agricultural or horticultural land subject to special valuation.

## VI. CONCLUSION

The Commission finds there is not 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 not clear and convincing evidence the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board is vacated and reversed.

## VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Saunders County Board of Equalization determining the value of the Subject Property for tax year 2020 is vacated and reversed.
2. The assessed value of the Subject Property for tax year 2020 is:

<b>Land</b>	<b>\$ 160,365</b>
<b>Improvements</b>	<b>\$ 0</b>
<b>Total</b>	<b>\$ 160,365</b>

3. This Decision and Order, if no appeal is timely filed, 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 for purposes of appeal on August 18, 2023.<sup>41</sup>

Signed and Sealed: August 18, 2023

SEAL



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Steven A. Keetle, Commissioner

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James D. Kuhn, Commissioner

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<sup>41</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.