

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

THOMAS M. PLACZEK,
APPELLANT,

V.

PLATTE COUNTY BOARD OF
EQUALIZATION,

AND

THOMAS A. TREMEL,
APPELLEES.

CASE NOS: 21A 0031
& 21A 0032

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

For the Appellant Thomas Placzek:

Burke J. Harr,
Houghton Bradford Whitted PC, LLO

For the Appellant and Appellee Thomas A. Tremel:

Jason Mielak,
Fehring & Mielak, LLP

For the Appellee Platte County Board of Equalization:

Elizabeth Lay,
Deputy Platte County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle on October 20, 2021, and November 30, 2021. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property consists of two 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 3-5, and 12-13.

II. PROCEDURAL HISTORY

The chart below shows the Case Nos., the assessed values as determined by the Platte County Assessor (the Assessor), the assessments requested by Thomas Tremel (the Taxpayer) at the time of the tax year 2021 protest, and the taxable values as determined by the Platte County Board of Equalization (the County Board) after a protest hearing for each of the two appeals in this consolidated proceeding.

Case No.	Assessed Value	Taxpayer Request	County Board Value
21A 0031	\$304,275	\$146,292	\$182,960 ¹
21A 0032	\$319,360	\$217,070	\$211,410 ²

The County Assessor, Thomas Placzek, 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 1-21 were admitted into evidence.

¹ Exhibit 1:2.

² Exhibit 2:2.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.³ 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.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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is

³ 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).

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

⁵ *Id.*

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

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

overvalued.⁸ 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.⁹

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.¹⁰ 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.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

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 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

⁸ 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).

⁹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the real property and an identification of the property rights valued.¹³

“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.”¹⁴ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.¹⁹

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 groups²⁰ shall be*

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Omaha Country Club* at 180, 829.

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

²⁰ 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,

*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 assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.*²¹

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.²² 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.²³

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.²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶ Uniformity requires that whatever

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).

²¹ Neb. Rev. Stat. § 77-1363 (Cum. Supp. 2020) (emphasis added).

²² Neb. Rev. Stat. § 77-132 (Reissue 2018).

²³ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

²⁴ *Neb. Const.*, Art. VIII, § 1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *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).

methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²⁷ 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.²⁸ 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 failure of plain legal duty, and not mere errors of judgment.²⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³⁰

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

1. Testimony of Thomas Placzek

Thomas Placzek, the County Assessor, testified in support of his appeals. Placzek had served as the County Assessor for more than 10 years. He explained his assessment of the Subject Properties, which can be viewed in part in the Property Record Files (PRF). The Subject Properties were in Market Area 6³¹ of Platte County and were assessed using mass appraisal methods based upon 56 sales from that market area.³² Placzek testified he reviewed the productivity of each sold parcel by analyzing the land capability groups (LCGs) of each acre. He

²⁷ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁸ *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).

²⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁰ *Id.* at 673, 94 N.W.2d at 50.

³¹ Market area 6 is the area of Platte County North of the Loup River. See, 2021 Reports and Opinions of the Property Tax Administrator for Platte County page 30.

³² Placzek used sales from the period October 1, 2017, to September 30, 2020, a time frame consistent with the study period prescribed by Title 350 Neb. Admin. Code. ch 17, §003.05C (7/17).

explained that soil classifications were first done by the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) and provided to the Property Assessment Division (PAD) of the Nebraska Department of Revenue, who determined which soil types should be classified under each LCG.

Placzek also testified as to his knowledge of the County Board's determinations of value for the Subject Properties.³³ He stated the County Board discussion focused primarily upon a single sale, the March 1, 2019, sale which included the Subject Property combined with several other parcels in the same sale. In addition, Placzek emphasized the single sale involved multiple soil types that are not present on the Subject Properties. Since the sale involved multiple parcels and had soils not present on the Subject Property, Placzek opined that the per acre price of the sale was not indicative of the values per acre of the Subject Properties and that, as a result, the County Board determinations of value for the Subject Properties created a lack of equalization with similar agricultural land in Market Area 6.

2. Testimony of Ruth Sorensen

Ruth Sorensen's testimony was provided for the hearings regarding the 2020 valuations of the Subject Properties. The parties stipulated to receipt of that testimony for this proceeding. Sorensen was the Property Tax Administrator, overseeing the Property Assessment Division of the Nebraska Department of Revenue. Her prior testimony focused primarily on the assessment changes from tax year 2019 to tax year 2020. Her testimony regarding the 2021 assessments in Platte County indicated that the information she provided regarding the 2020 assessments was not applicable to the 2021 assessments. We find that

³³ See also, Exhibit 8.

most of her testimony is therefore not directly relevant to the valuation of the Subject Properties for tax year 2021.

3. Testimony of Thomas Tremel

The receipt of testimony of Thomas Tremel, the owner of the Subject Properties, was also stipulated to by the parties based upon his prior testimony. He confirmed that the March 1, 2019, sale combining the Subject Properties and other acres and improvements involved the entire 148 acres and a sale price of \$600,000. Tremel stated that after that sale he sold the grass acres and the improvements and retained the irrigated cropland and dry cropland. Tremel asserted that both sales supported the County Board determinations of value. Information regarding the date of the sale of the grass acres and improvements, the sale price, or other terms of that sale were not presented.

4. Testimony of Robert Lloyd

The receipt of testimony of Robert Lloyd from the 2019 hearing was also stipulated to by the parties. Lloyd was one of the Commissioners on the County Board at the time of the County Board determinations. He testified he had been a farmer for 50 years and had been on the County Board for more than 20 years. He said that he farmed the Subject Properties from 1972 to 1976 and that he disagrees with the NRCS soil typing data and the County Assessor's market area designations. He asserted that the Subject Properties were "all sand" and that they should not have been included in Market Area 6. Lloyd further testified that the per acre value of the Subject Properties should have been based upon the per acre price of the March 1, 2019, sale.

5. Testimony of Jerry Engdahl

The County Board also called Jerry Engdahl, the County Board Chairman, to testify. Like Lloyd, Engdahl stated he disagreed with the

County Assessor's market area designations. Based upon his experience as a licensed realtor and his conviction that the Subject Properties should not have been included in Market Area 6, Engdahl testified he believed the best indicator of value for the Subject Properties was the per acre March 1, 2019, sale price and two other sales. The PRFs for the two other sales were not made part of the record. Engdahl also emphasized his belief that flooding over the decades may have significantly changed the soils of the county and the NRCS soil mapping is therefore flawed.

Mr. Engdahl testified that for tax year 2021 the determination of the County Board for the Subject Properties was based on the per acre value determined using the total assessed value of a parcel owned by the Taxpayer that was adjacent to the Subject Property, but in Market Area 3, divided by that parcel's total acreage, without regard to soil classification or use.

B. Analysis

1. Agricultural Assessments Beginning Tax Year 2020

Under Nebraska law, agricultural land and horticultural land³⁴ is a distinct class of real property and is divided into multiple subclasses.³⁵ 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 four-digit code and provides the soil type codes to the Property

³⁴ Hereinafter referred to as "agricultural land."

³⁵ Neb. Rev. Stat. § 77-103.01 (Reissue 2018).

Assessment Division (PAD) of the Nebraska Department of Revenue. PAD then classifies each soil type into one of eight Land Capability Groupings (LCG) for irrigated cropland, dryland cropland, and grassland.³⁶ 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:

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

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.³⁷

2. Agricultural Assessments by the Platte County Assessor for Tax Year 2021

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

³⁶ 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.

³⁷ 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.").

year 2021. Placzek testified the Subject Properties were located in Market Area 6.³⁸ He testified the Subject Properties were assessed based upon values relating to soil types in Market Area 6 which were based upon market information relating to the 56 sales in market area 6. We take up these factors in turn.

a. 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 2021, he applied the soil classifications and LCG's as provided to him by PAD. Per the PRF's, the Subject Properties contained multiple soil types, including 1A1, 2A1, 4A, 2D1, 4D, and 1G1. For each soil type the County Assessor applied the same value per acre on the Subject Property as was applied to other properties in Market Area 6. No contrary evidence was received.

Therefore, we find that by using the soil type information from the NRCS and LCG classifications as directed by PAD the County Assessor's actions were consistent with the requirements of Neb. Rev. Stat. § 77-1363.

b. The County Assessor Properly Considered Market Data from Qualified Sales to Determine the Value Per Acre for Each LCG in Market Area 6

For tax year 2021, the County Assessor utilized agricultural sales in the three years prior to the effective date of January 1, 2021.³⁹ For Market Area 6, there were 56 qualified sales.⁴⁰ The County Assessor

³⁸ The Subject Properties were all located in market area 6, an area generally north of the Loup 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.

³⁹ For tax year 2021, the three-year period began October 1, 2017, and ended September 30, 2020. Title 350 Neb. Admin. Code, Chapter 17, Section 003.05C, Revised 07/05/2017.

⁴⁰ See, 2021 Reports & Opinions of the Property Tax Administrator, Platte County, page 27.

analyzed these sales to determine the values per acre for each LCG, including irrigated cropland, dryland cropland, and grassland.

Placzek testified he applied the values per acre for each LCG consistently for all agricultural parcels in Market Area 6, including both of the Subject Properties. We find these assessment practices were reasonable. Neither the Taxpayer nor the County Board offered any persuasive evidence otherwise.

The County Board's methodology to determine the actual value of the agricultural acres of the Subject Properties is problematic as, according to the testimony of both Lloyd and Engdahl, the per acre value for each of the 84.08 acres of the Subject Properties was based upon the sale price of the 148 acres, regardless of the use of the acres or the productivity of the soil types as used. Alternatively, the use of the average assessed value of a parcel found in another market area, regardless of the use of the acres or the productivity of the soil types would be equally problematic. In fact, Lloyd was critical of the NRCS soil typing information, and Engdahl said, "I could care less," about the soil types.⁴¹ Both Lloyd and Engdahl also expressed disagreements with the market area determinations made by the County Assessor and that they believed the Subject Properties should not have been included in Market Area 6.⁴² The County Board approach ignored the significantly different values of each of the uses of the land (i.e. grass versus irrigated) and did not account for the productivity of the soil types of those acres. Both County Board members testified that the main basis for their determination was the price the Taxpayer stated he paid for the "crop land" acres. The determination regarding the per acre sale price of the 148 acres was based upon at least 63.92 acres

⁴¹ These opinions are in conflict with the statutory requirements that, "[c]lasses 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." Neb. Rev. Stat. § 77-1363 (Reissue 2018).

⁴² "Market Area is an area with defined characteristics within which similar properties are effectively competitive in the minds of buyers and sellers with other comparable property in the area." 350 NAC, Chapter 14, § 002.47.

about which very little evidence was offered in this appeal. We therefore find that the County Board determinations of the actual value of the 84.08 agricultural acres of the Subject Properties was unreasonable.

We find that none of the reasons given by the County Board members who testified and none of the evidence regarding the reasoning of the County Board was consistent with generally accepted appraisal principles. On the contrary, the County Assessor's methodology for assessing the taxable value of the Subject Properties was consistent with mass appraisal principles and conformed to Nebraska law. Therefore, we find that the County Assessor's values are clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable.

VI. CONCLUSIONS OF LAW

The Commission finds the assessed value determinations by the County Assessor constitute competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations.

The Commission also finds assessed value determinations by the County Assessor are clear and convincing evidence that the County Board decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board for both of these appeals should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Platte County Board of Equalization determining the taxable values of the Subject Properties for tax year 2021 are vacated and reversed.
2. The taxable values of the Subject Properties for tax year 2021 are as follows:

Case No.	Parcel ID	Taxable Value
21A 0031	710163446	\$304,275
21A 0032	710028882	\$319,360

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 2021.

7. This Decision and Order is effective for purposes of appeal on June 5, 2024.⁴³

Signed and Sealed: June 5, 2024

SEAL



Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁴³ 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.