



## **Supreme Court Considers Appeal from TERC Regarding Valuation of Grassland Properties**

In *Betty L. Green Living Trust v. Morrill County Board of Equalization*, 299 Neb. 933, --- N.W. ---(2018), the appeal involved the valuations of certain grassland properties owned by the Trusts. The Trusts appealed from a 2017 order of the Tax Equalization and Review Commission (TERC) which affirmed the valuations that had been established by the county assessor and were approved by the County Board of Equalization (the Board). The Supreme Court affirmed TERC's order.

For tax year 2016, the assessor determined the assessed valuations of five properties for a total of \$760,245. The Trusts protested the assessments to the Board and requested assessed valuations for a total of \$444,742. The Board accepted the assessor's valuations and denied the protests. The Trusts then appealed to TERC.

The Trusts asserted in this appeal that the assessor used a method of valuation that was flawed when applied to grassland properties such as the properties at issue in this case. Such was the same argument that had been used before the Board. TERC noted in its order that valuation of agricultural and horticultural land is governed by, *inter alia*, chapter 77, article 13, of the Nebraska Revised Statutes and the regulations adopted thereunder by the Property Tax Administrator and the Nebraska Department of Revenue's property assessment division (PAD). TERC found Neb. Rev. Stat. § 77-1363 to be relevant which provides:

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. 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 [TERC] to achieve more uniform and proportionate valuations.

TERC described the law and regulations relevant to valuation in this case as:

In Nebraska agricultural land and horticultural land classes shall be inventoried by

subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture as converted into land capability groups (LCG) by the Property Tax Administrator. County assessors are required to utilize these LCGs as directed by the Property Tax Administrator. The Property Tax Administrator and the Nebraska Department of Revenue's [PAD] has adopted and promulgated Rules and Regulations to carry out their duties pertaining to the classification of agricultural and horticultural land by LCGs. These rules and regulations state that the conversion legend for all LCGs is prepared by the PAD according to the dryland capability classification of each soil that shows, in a general way, the suitability of each soil for most kinds of field crops. This conversion legend shows the LCGs for each soil in a county whether in grassland, dryland or irrigated cropland.

PAD's regulations require county assessors to inventory and categorize each parcel of agricultural land using the following classes: (1) irrigated cropland; (2) dryland cropland; (3) grassland; and (4) wasteland. The county assessor is then required to use a soil conversion legend created by PAD to assign agricultural land to an appropriate LCG.

For grassland the LGCs 1G1, 1G, 2G1, 2G, 3G1, 3G, 4G1, and 4G should generally progress from very high yields of forage to very low yields of forage. In addition to the soil conversion legend, the regulations provide LCG definitions and guidelines for use by county assessors for purposes of assessing agricultural and horticultural land. The regulations also permit county assessors to develop additional LCG sub-classifications if needed to achieve uniform and proportionate valuation.

The Trusts primarily argued that grassland soil types assigned to the 1G1 classification should have the highest yields of forage while those assigned to the 4G classification should have the lowest yields of forage. The evidence presented through the Trusts' witness purported to show that this expectation was not the case and that instead, a full range of yields of forage was present in each LCG classification and some soils classified as 4G had higher yields of forage than some soils classified as 1G. The Trusts' witness opined that the LCG assignments were random, arbitrary, and virtually meaningless and that therefore, the LCG's established by the PAD for grassland classifications did not meet the requirements of the applicable regulations and did not result in assessments that were uniform and proportionate.

The Trusts' witness proposed an alternate valuation methodology that did not use the LCG's determined by the Property Tax Administrator and instead categorized grassland properties by the Natural Resources Conservation Service range production rating. In its order of July 2017, TERC acknowledged the Trusts' evidence and stated that "[t]he LCG assignments for each grassland soil type according to the Rules and Regulations of the Department of Revenue for grassland in [the] County appear to be flawed when looking at the [Natural Resources Conservation Service] production ratings for each soil type compared to its assigned LCG." In its order, TERC nevertheless found that while the Trusts showed potential flaws in the LCG assignments for grasslands, they "failed to demonstrate that this flaw has resulted in assessed value determinations in [the] County that are incorrect or grossly excessive and the result of systematic will or failure of a plain legal duty." In its decision, TERC noted the assessor had testified that she valued the Trusts' properties "in the same way that she valued all agricultural and horticultural property in [the] County, and that this valuation followed the requirements of law imposed upon her." The assessor "looked at all sales, not just sales containing only grassland, to determine the assessed values for agricultural and horticultural land values in all classes, irrigated, dryland and grassland."

As compared to the assessor's approach, TERC emphasized that the valuation methodology urged by the Trusts "focused on a single factor, production of forage, as the basis for [the] entire analysis, alleging that no other factors apply to grassland values in [the] County."

The Court noted, "TERC further found that the Trusts did not establish by clear and convincing

evidence that the valuations placed on their properties, when compared to valuations placed on similar property, were grossly excessive and the result of systematic will or failure of a plain legal duty and not mere error of judgment.”

Additionally, the Court stated,

TERC concluded that there was “not competent evidence to rebut the presumption that the . . . Board faithfully performed its duties and had sufficient competent evidence to make its determination.” TERC further concluded that there was “not clear and convincing evidence that the . . . Board’s decision was arbitrary or unreasonable.” TERC therefore denied the Trusts’ appeals and affirmed the valuations determined by the Board.

In this case, the Court found TERC did not dismiss the Trusts’ witness testimony out of hand. Instead, TERC allowed him to testify regarding the value of the property, but after considering his testimony, TERC concluded that it did not serve to rebut the presumption.

The Court concluded that TERC’s decision concluding the Trusts did not present competent evidence to rebut the presumption the Board faithfully performed its duties and had sufficient competent evidence to make its determinations conform to the law, was supported by competent evidence, and was neither arbitrary, capricious, nor unreasonable.

For the full text of the opinion, click [here](#).

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