

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald V. Cain, Jr.,
Appellant,

v.

Custer County Board of Equalization,
Appellee.

Case Nos: 13A 058, 13A 059, 13A 060,
13A 061, 13A 062, 13A 063, 13A 064,
13A 065, 13A 066 & 13A 067

Decision and Order Affirming the Decisions
of the Custer County Board of Equalization

For the Appellant:

David Domina,
Domina Law Group PC LLO

For the Appellee:

Nicholas F. Sullivan,
Dvorak Law Group LLC

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.
Commissioner Hotz presided.

I. THE SUBJECT PROPERTIES

The Subject Properties are ten agricultural parcels located in Custer County, Nebraska. The Commission's case numbers, the corresponding parcel numbers, and the exhibit numbers of the property record files (PRFs) for each Subject Property are listed in the table below. The legal descriptions of the Subject Properties are found in the PRFs.

Case Number	Parcel Number	PRF Exhibit Number
13A 058	000485700	14
13A 059	000485600	13
13A 060	000486012	15
13A 061	000506710	19
13A 062	000506700	17
13A 063	000506400	18
13A 064	000480900	11
13A 065	000481080	20
13A 066	000481050	12

Case Number	Parcel Number	PRF Exhibit Number
13A 067	000487600	16

II. PROCEDURAL HISTORY

For tax year 2013, the Custer County Assessor (the County Assessor) assessed the Subject Properties and Donald V. Cain, Jr. (the Taxpayer) protested these assessments, requesting lower assessed values. The Custer County Board of Equalization (the County Board) heard the protests pursuant to Neb. Rev. Stat. § 77-1502, and in each case, made no change to the assessed value as determined by the County Assessor. The case number, the parcel number, the value determined by the County Assessor, the value requested by the Taxpayer at the time of the protests, the value determined by the County Board, and the exhibit numbers of the County Board decisions are shown in the table below.

Case Number	Parcel Number	County Assessor Assessment	Taxpayer Request	County Board Determination	Board Decision Exhibit Number
13A 058	000485700	\$86,845	\$48,007	\$86,845	1
13A 059	000485600	\$139,416	\$86,390	\$139,416	2
13A 060	000486012	\$12,644	\$5,409	\$12,644	3
13A 061	000506710	\$152,834	\$103,223	\$152,834	4
13A 062	000506700	\$214,710	\$74,351	\$214,710	5
13A 063	000506400	\$194,771	\$55,733	\$194,771	6
13A 064	000480900	\$162,072	\$57,073	\$162,072	7
13A 065	000481080	\$813,002	\$276,955	\$813,002	8
13A 066	000481050	\$70,823	\$29,816	\$70,823	9
13A 067	000487600	\$80,401	\$41,668	\$80,401	10

The Taxpayer appealed each of these decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on February 23, 2022. The parties stipulated to the admission of Exhibits 1 through 65 and 71 through 87. Exhibits 66 through 70 were not admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board is de novo.¹ 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."²

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.³

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.⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵

The burden of proof is on the taxpayer to establish the contention that the value of property has been arbitrarily or unlawfully fixed by the county board of equalization at an amount greater than its actual value, or that its value has not been fairly and properly equalized when considered in connection with the assessment of other property and that such disparity and lack of uniformity result in a discriminatory, unjust, and unfair assessment.⁶ A county board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes that the board's valuation was unreasonable or arbitrary.⁷

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

¹ See Neb. Rev. Stat. § 77-5016(8) (2014 Cum. Supp.), *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 (2009).

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

³ *Id.*

⁴ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49 (1959).

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

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁸ The commission may also “take notice of judicially cognizable facts and in addition 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.”⁹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

IV. VALUATION 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 the real property and an identification of the property rights valued.¹¹

“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 section 77-1371, (2) income approach, and (3) cost approach.”¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵

All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶ Agricultural land and horticultural land shall

⁸ Neb. Rev. Stat. § 77-5016(8) (2014 Cum. Supp.).

⁹ Neb. Rev. Stat. § 77-5016(6) (2014 Cum. Supp.).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. § 77-131 (Reissue 2009).

¹⁵ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2009)

¹⁶ Neb. Rev. Stat. § 77-201(1) (Reissue 2009).

be valued for purposes of taxation at seventy five percent of its actual value.¹⁷ Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.¹⁸ 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.¹⁹

V. EQUALIZATION LAW

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.²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.²³ 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.²⁴ 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.²⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and

¹⁷ Neb. Rev. Stat. § 77-201(2) (Reissue 2009).

¹⁸ Neb. Rev. Stat. § 77-1359(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. § 77-1359(2) (Reissue 2009).

²⁰ *Neb. Const.*, Art. VIII, § 1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *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).

²³ See *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.”²⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

VI. FINDINGS OF FACT

Dr. Donald V. Cain, Jr., (the Taxpayer) a veterinarian and cattle rancher, owns the Subject Properties. In total, the Subject Properties consist of 1,093.93 contiguous acres located southwest of the town of Broken Bow, Nebraska, near the city limits. The Subject Property is used for grazing cattle or production of forages for cattle and includes shelters for calving. As of the 2013 assessment year, two working wells were used for pivot irrigation and a third open discharge well was situated on the property, but it did not produce enough water for use in irrigation.

The center pivots placed on the property by the Taxpayer were custom-made to fit the topography of the Subject Properties and the specific locations where the pivots were installed. Per the Taxpayer, the distance between the ground and the irrigation pipe varied from 8 inches to over 120 feet. Connie Braithwaite, who was Custer County Assessor in 2013, testified that she was not aware of any other irrigation system in Market Area 1 customized to a specific application like the Taxpayer’s, nor did she know of any other properties in the county where the irrigation systems had the elevation variation described by the Taxpayer. The Taxpayer testified that he used the pivots to supplement natural rainfall during dry years, and sometimes chose not to use the pivots in years with abundant rainfall. As of 2013, 756.39 acres of the Subject Property’s 1,093.93 acres were certified as irrigated to the Natural Resources Conservation Service (NRCS).²⁹ The certified irrigated acres are shown in the chart below.

Case Number	Parcel Number	Exhibit Number	Total Acres	Certified Irrigated Acres
13A 058	000485700	14:5	79.69	38.7

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

²⁹ Testimony of Cain, Exhibits 11-20.

Case Number	Parcel Number	Exhibit Number	Total Acres	Certified Irrigated Acres
13A 059	000485600	13:5	150.29	51.3
13A 060	000486012	15:5	7.98	7.4
13A 061	000506710	19:5	70.25	54.27
13A 062	000506700	17:5	79.54	74.46
13A 063	000506400	18:5	80	78.27
13A 064	000480900	11:5	89.72	59.38
13A 065	000481080	20:5	420.21	328.56
13A 066	000481050	12:5	49.15	24.95
13A 067	000487600	16:5	67.1	39.1
Total			1,093.93	756.39

Maps showing the irrigated and non-irrigated portions of the Subject Properties are found at Exhibits 77 and 79.

For tax year 2013, the Subject Properties were assessed by Braithwaite, while she was the Custer County Assessor. At the time of the assessment, Braithwaite held the State Assessor's Certificate. She began working in the County Assessor's Office as a clerk in 1974, was promoted to Deputy Assessor, and then served as County Assessor from 1989 through 2018. Braithwaite assessed the Subject Properties using a mass appraisal sales comparison approach, in which all the sales that occurred in a rolling three-year period prior to the current tax year running from October 1, 2009, through September 30, 2012, were considered. According to Braithwaite, taxable values were determined based on the median of an array of those qualified sales.

In 2013, Custer County had five market areas for agricultural property.³⁰ Braithwaite determined the market areas based on soil types, natural boundaries, such as the Loup River, and special considerations, such as the need to dig deeper wells to find water in the southwest corner of the county. Market Area 1 is the largest market area, covering the center and almost the entire eastern half of the county; the Subject Properties are located near the geographic center of this

³⁰ A 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. Title 350 NAS, Chapter 14, §002.47.

market area.³¹ Market Area 2 is in the Northwest corner of Custer County, generally identified as the sandhills. Market Area 4 is characterized as having a “deep well problem,” in which property owners must dig wells deeper than elsewhere in the county to obtain water for irrigation. The boundary lines between these market areas changed only slightly, if at all, from their inception in the 1990s to 2013. The Subject Properties have been in Market Area 1 since the market areas were first drawn. The LVG codes³² for the soils and the corresponding per acre assessed values for Custer County agricultural land in 2013 are shown at Exhibit 23.³³ Braithwaite testified these were the assessed values after the agricultural discount was applied to the actual values. The letter in each LVG code indicates the land use, and the number(s) indicate the quality and productivity of the soil; for example, LVG 1A1 indicates the highest soil quality (initial “1”) of irrigated land (“A”) in Custer County.³⁴ The LVGs used by the County Assessor for 2013 include special groupings for canyons (defined as “soil with 60% slope”³⁵) and sandhills soils (defined as “valentine soils – 4807, 4810, 4781, 4791”).³⁶ The list of soil types and corresponding LVGs (“capability groups”) are found at Exhibit 22, which also contains soil maps of the county. The LVGs also take topography into account; the same type of soil may be assigned to different LVGs depending upon topography.³⁷

Braithwaite testified that the per acre values listed on Exhibit 23 were not the actual values, but rather, they were the agricultural values, or assessed values, which are valued at 75% of actual value.³⁸ She further testified that the values listed in each of the property record files for

³¹ A map of the 2013 market areas, from which some findings in this paragraph are derived, is found at Exhibit 21:1.

³² LVG, or land valuation grouping, is generally synonymous to LCG, or land capability group. “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. Since the soil conservation service maps major natural bodies of soil in a mapping area, the criteria used for grouping the soils do not include major land reformation that would change slope, depth or other characteristics of the soils, nor do they include unlikely major reclamation projects. When such areas have been mapped and assigned capability units by the Natural Resources Conservation Service, the assigned capability unit is used. A LCG is determined for each kind of soil and its current land use.” Title 350, Chapter 14, §004.08E.

³³ See 350 Neb. Admin. Code Ch. 14 § 004.08 for the Department of Revenue’s regulations related to classification of agricultural land for assessment purposes. The term “LCG,” for Land Capability Group, rather than “LVG,” for Land Valuation Group, is used in the Department of Revenue’s regulations; see, e.g., 350 Neb. Admin. Code Ch. 14 § 002.41. The two terms are used interchangeably by assessors and appraisers throughout the State.

³⁴ The classification 1A1 is the highest available in the state, but according to Braithwaite’s testimony, soils falling into that category are not found in Custer County.

³⁵ Exhibit 23:1.

³⁶ Exhibit 23:1.

³⁷ Exhibit 22:1, testimony of Braithwaite.

³⁸ Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value...” Neb. Rev. Stat. § 77-201(2). Actual value has the same meaning as market value. *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

the Subject Properties³⁹ were the agricultural values, and that columns in the property record files labeled “Mkt Value” actually displayed the agricultural value, or 75% of actual value, despite the heading.⁴⁰ According to Braithwaite, if a second reduction to 75% of market value were applied to the per acre values shown at Exhibit 23:1, that would be a double reduction, or 75% of 75% of actual value.

Braithwaite testified that each soil type on the Subject Properties was converted to an LVG, and the number of acres within that LVG was multiplied by the per acre agricultural value listed in Exhibit 23. This methodology was used to assess all real property in Custer County, using the same per acre values within each market area, for 2013. According to Braithwaite, the assessments were uniform and equalized throughout Market Area 1 and Custer County. Some of the Subject Properties were also granted downward “spot adjustments” when the parcel was irrigated by a well on an adjacent parcel with the same owner.⁴¹ These adjustments were made equally across the county, regardless of whether the property owner filed a protest with the County Board. The specific “no well adjustment” values for 2013 are shown at Exhibit 23:2. From approximately 2006 through approximately 2011, Braithwaite included an “irrigated grassland” classification for some land in Custer County.

The exhibits offered by the County Board included two signed summary letters related to appraisals of some or all of the Subject Properties. One indicates a market value for the “Cain farm,” as of October 29, 2008, of \$2,110,000.⁴² The other indicates a market value for “739.74 county assessed acres and including irrigation equipment,” as of December 31, 2008, of \$710,000.⁴³ This latter opinion was expressed in a letter dated August 13, 2010, which went on to state, “it is also my opinion that the value estimate as of December 31, 2008, remains reasonably accurate as an estimate of the current market value today.”⁴⁴

³⁹ Exhibits 11 through 20.

⁴⁰ See, e.g., Exhibit 17:3. We note that the columns labeled “Mkt Value” and “Assessed Value” contain the same values in each of the PRFs for the Subject Property.

⁴¹ See Exhibits 13, 14, 15, and 16.

⁴² Exhibit 26:4. This market value opinion was given more than four years before the January 1, 2013, effective date of these appeals.

⁴³ Exhibit 26:5, emphasis in original. This market value opinion included only 739.74 acres of the 1,093.93 acres at issue in these appeals.

⁴⁴ Exhibit 26:5, emphasis removed. Neither of these market value opinions appears to have expressed any opinion of assessed value, or taxable value.

The County Board offered evidence of four comparable parcels, parcel numbers 000487900, 000514810, 000514480, and 000477460, all of which are in close proximity to the Subject Properties, and all of which contained similar soil types falling into the same LVGs as the soils on the Subject Properties.⁴⁵ All of these parcels were assessed using the same methodology and per acre values as the Subject Properties. Braithwaite considered all the parcels comparable to the Subject Property. Braithwaite testified the assessed values for Market Area 1 were equalized for tax year 2013. She opined that the value placed on the Taxpayer's land for 2013 was not grossly excessive for 2013, and that the values placed on the Taxpayer's land and across Market Area 1 were reasonable for 2013.

VII. ANALYSIS

The Taxpayer's requested value of \$744,415 relies on the determination of the Nebraska Supreme Court that the valuation of the Subject Property for tax year 2012 was \$951,719.10.⁴⁶ The Taxpayer's opinion of value of the Subject Properties for 2013 was developed by determining the percentage change from the 2012 assessment (as originally assessed by the County Assessor) to the original 2013 assessment (5.7%, according to the Taxpayer), and multiplying the Supreme Court's determination of value of \$951,719.10 by this percentage. The Taxpayer's result was \$1,005,966, which, he asserts, is the actual value of the Subject Properties for 2013. The Taxpayer then multiplied the \$1,005,966 by 74% to reflect the level of value for agricultural and horticultural land in Custer County for 2013. The result, which is the Taxpayer's opinion of the agricultural land value for tax year 2013, is \$744,415, or \$681 per acre.

It is important to note, however, the Supreme Court's determination was based on a specific evidentiary record developed to show the value of the Subject Properties for tax year 2012. Particularly, in determining that the actual value of the Subject Property was \$870 per acre, the Supreme Court relied on the testimony and appraisal report of Cyril Thoene, a certified general appraiser who estimated a "value of between \$450 and \$870 per acre" for 2012.⁴⁷ Thoene did not

⁴⁵ Exhibits 81 through 84, testimony of Braithwaite. See maps at Exhibit 77 for the relative locations of the parcels discussed in this paragraph. Compare Exhibit 81:4, 82:4, etc., with Exhibit 11:3, 12:3, etc., for soil types and corresponding values.

⁴⁶ *Cain v. Custer County Bd. of Equal.* ("Cain I"), 298 Neb. 834, 854, 906 N.W.2d 285, 300 (2018). The dispute between the Taxpayer and the County Board over the tax year 2012 taxable value of the Subject Properties involved protracted litigation resulting in an order that the valuation of the Subject Properties be set at \$870 per acre, for a total of \$951,719.10.

⁴⁷ See *Cain II* at 851, 298.

testify in the present appeals, and neither his appraisal report nor any other appraisal report was offered and received as evidence in these appeals.

Furthermore, as the County Board observes, because the Taxpayer was not given proper notice of an assessment change for the 2012 tax year, the burden of proof at the hearing before the Commission for tax year 2012 was by a preponderance of the evidence.⁴⁸ However, the Taxpayer does not assert that he was not given proper notice of his assessments for tax year 2013, and the record in these appeals contains nothing to indicate a notice defect. Therefore, in order to prevail in these appeals, the Taxpayer must show that the decisions of the County Board were arbitrary or unreasonable by clear and convincing evidence, which is a higher standard.⁴⁹

Therefore, we consider the Taxpayer's argument that the tax year 2012 valuation should be the basis for the tax year 2013 value. A prior year's assessment, either of the same property, or of another property, is not relevant to the current year's valuation.⁵⁰ In *Affiliated Foods Co-op., Inc., v. Madison County*, the Nebraska Supreme Court discussed a situation in which the value of real property for the prior tax year was set by judicial decree:

In its pleadings before the county board of equalization and in the district court, [property owner] Affiliated contended that the tax valuation for 1984 was binding upon the board for 1985 because it was fixed by the Madison County District Court in earlier litigation. The 1984 valuation was lower than the assessor's 1984 appraisal. Neb. Rev. Stat. § 77-1502 (Cum.Supp. 1984) provides that the county board of equalization shall meet commencing April 1 of each year for not less than 3 nor more than 60 days to review and decide protests filed with it. Under the same section, the board may meet at any time for the purpose of equalizing assessments of any omitted or undervalued property. It thus appears that the Legislature provided that the valuation for property for assessment purposes for each year could be different, according to the circumstances. In deciding *DeVore v. Board of Equalization*, 144 Neb. 350, 13 N.W.2d 451 (1944), we held in effect that a decree fixing the value of property under a prior assessment is not admissible to prove the value of real estate under a subsequent assessment.⁵¹

Thus, although we are bound by the Supreme Court's decisions on matters of law, we do not treat the court's factual determination of the tax year 2012 value of the Subject Properties as controlling in relation to the tax year 2013 value because the tax year 2013 proceeding had an

⁴⁸ See *Cain II* at 838, 290-291.

⁴⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁵⁰ See *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

⁵¹ *Affiliated Foods Co-op., Inc., v. Madison County*, 428 N.W.2d 201, 206, 229 Neb. 605, 613-614 (DATE).

entirely different evidentiary record. We are bound to decide this appeal based on the evidence presented at this hearing, not on different evidence presented at a previous hearing for a previous tax year.⁵²

We move on to focus on the evidence received in these appeals. As the Supreme Court has noted, “an owner who is familiar with his property and knows its worth is permitted to testify as to its value.”⁵³ We regard the Taxpayer’s opinion of value as competent evidence to rebut the presumption in favor of the County Board’s decision as a matter of law, but we do not find that it constitutes clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable, for several reasons. First, the Taxpayer’s opinion of value is based on the value set by the Supreme Court for a prior tax year, relying on a different evidentiary record, which included an appraisal and the testimony of the expert who performed the appraisal. Second, the Taxpayer’s opinion of value is based on the presumption that the original assessed values were the actual value of the Subject Properties rather than the reduced agricultural value; however, the testimony of Braithwaite and the exhibits, particularly Exhibits 11 through 20 and Exhibit 23, show that the assessed value was not actual value; it was 75% of actual value, as required by Neb. Rev. Stat. § 77-202(2). And third, the Taxpayer’s method of determining value is not a method identified in Neb. Rev. Stat. § 77-112, and no evidence has been produced that the Taxpayer’s method is a professionally accepted mass appraisal method.

Because Braithwaite determined the agricultural value of each LVG before applying those values to the Subject Property, the Taxpayer argues that Braithwaite and the County Board “[f]ail[ed] to determine the actual value and make necessary adjustments from it,” and thus, “committed an overt error of law, and their valuations for 2013 are arbitrary.”⁵⁴ In practice, however, this argument boils down to the assertion that Braithwaite ought to have done her multiplication in a different order. The order in which the factors are multiplied makes no difference to the result.⁵⁵ We also note that the Taxpayer’s own opinion of value is based on the

⁵² See, *Cain II* at 839-840, 291-292.

⁵³ *Cain II* at 851, 298.

⁵⁴ Taxpayer, Dr. Don Cain, Jr.’s Post Hearing Brief at 5.

⁵⁵ Consider a simple hypothetical in which Cain had 10 acres of a soil type for which the sales comparison approach indicated an actual (market) value of \$1,000 per acre. Under Braithwaite’s methodology, the \$1,000 actual value for acres of this soil type would be multiplied by 0.75, with the result of \$750 per acre, and then multiplied by 10 because Cain has 10 acres of this soil type. The result is \$7,500. Under Cain’s preferred methodology, Braithwaite would first multiply the \$1,000 actual value by Cain’s 10 acres to determine their actual value, \$10,000, and then multiply the result by 0.75 to arrive at the agricultural value.

percentage change in Braithwaite's values from tax year 2012 to tax year 2013, so it may follow that if those values are arbitrary, then the Taxpayer's opinion of value is also arbitrary.

The record shows that Braithwaite determined the per acre agricultural value for each LVG in Market Area 1 based on sales that occurred in the three-year period running from October 1, 2009, through September 30, 2012, which is the standard study period for tax year 2013 for agricultural land and horticultural land.⁵⁶ Braithwaite applied these per acre agricultural values to each acre of the Subject Properties based on soil production capacity and actual use of the land, e.g., irrigated or grassland. The Subject Properties were assessed using the same per acre values and methodology as all other acres of the same LVGs in the same market area, as evidenced by the testimony of Braithwaite and by the County Board's comparable parcels. Braithwaite's processes were consistent with the regulations governing assessment of agricultural and horticultural land, and according to our knowledge and experience, they were consistent with the processes used to assess agricultural and horticultural land throughout the state.⁵⁷

The appraisal of real estate is not an exact science.⁵⁸ In tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.⁵⁹ Mathematical precision is impossible in dealing with taxable values.⁶⁰ The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon the property when compared with valuations placed upon other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty.⁶¹ The Taxpayer offered no evidence of similar properties to show that the valuation placed upon the Subject Properties was grossly excessive by comparison.

The result, again, is \$7,500, due to the associative property of multiplication. We are not persuaded that the \$7,500 produced by Braithwaite's method is arbitrary but the \$7,500 produced by Cain's preferred method is not.

⁵⁶ See 350 Neb. Admin. Code, Ch. 17 § 003.05C.

⁵⁷ The Commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. § 77-5016 (Cum. Supp. 2014).

⁵⁸ *In re Estate of Bock*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

⁵⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 851, 906 N.W.2d 285, 298 (2018).

⁶⁰ *Le Dioyt v. County of Keith*, 161 Neb. 615, 624, 74 N.W.2d 455, 461-62 (1956) (citation omitted). see *State ex rel. Union P. R. Co. v. State Bd. of Equal.*, 81 Neb. 139, 146, 115 N.W. 789, 792 (1908) (it is impracticable and perhaps impossible to fix the value of properties with mathematical precision).

⁶¹ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 284, 753 N.W.2d 802, 812 (2008) (Citations omitted).

When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.⁶² The appraisal summary letters in the record are based on 2008 appraisals; they reach widely disparate conclusions of value; at least one did not appraise all acres of the Subject Properties; and at least one included but did not account for the value of irrigation equipment. We cannot rely on these to determine the taxable value of the Subject Properties for tax year 2013.

As the record stands, the only evidence of value other than the value determined by the County Assessor and the County Board is the Taxpayer's opinion. As discussed above, that opinion does not constitute clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.

Agricultural land is not assessed at actual value; it is assessed at 75% of actual value.⁶³ The Commission is authorized to "determine taxable value of property as it hears an appeal or cross appeal."⁶⁴ Taxable value has the same meaning as assessed value.⁶⁵ Neb. Rev. Stat. § 77-1507.01, which requires the Commission "to determine the actual value or special value of real property for that year" applies only when "a failure to give notice prevented timely filing of a protest or appeal[.]" The Taxpayer filed his protests and appeals timely for tax year 2013, and there is no allegation of a failure of notice. Accordingly, the values listed in our Order section below represent the taxable value of the parcels, which is the same as the assessed value, with the agricultural discount described in Neb. Rev. Stat. § 77-201(2) already applied.

VIII. CONCLUSIONS OF LAW

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its

⁶² *JQH La Vista Conference Ctr. Dev. LLC v. Sarpy Cnty. Bd. of Equal.*, 285 Neb. 120, 126, 825 N.W.2d 447, 453 (2013).

⁶³ Neb. Rev. Stat. § 77-201(2) (Reissue 2009).

⁶⁴ Neb. Rev. Stat. § 77-5016(8) (2014 Cum. Supp.).

⁶⁵ Neb. Rev. Stat. § 77-131 (Reissue 2009).

determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, The County Board's decisions should be affirmed.

IX. ORDER

IT IS ORDERED THAT:

1. The decisions of the Custer County Board of Equalization determining the taxable value of the Subject Properties for tax year 2013 are affirmed.
2. The taxable value of the Subject Properties for tax year 2013 are as follows:

Case Number	Parcel Number	Taxable Value
13A 058	000485700	\$86,845
13A 059	000485600	\$139,416
13A 060	000486012	\$12,644
13A 061	000506710	\$152,834
13A 062	000506700	\$214,710
13A 063	000506400	\$194,771
13A 064	000480900	\$162,072
13A 065	000481080	\$813,002
13A 066	000481050	\$70,823
13A 067	000487600	\$80,401

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Custer County Treasurer and the Custer County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
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 2013.

7. This Decision and Order is effective for purposes of appeal on February 23, 2023.⁶⁶

Signed and Sealed: February 23, 2023

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁶⁶ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.