

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

Betty L. Green Living Trust,

and

Richard R. Green Living Trust,  
Appellant,

v.

Morrill County Board of Equalization,  
Appellee.

Case Nos: 16A 0009, 16A 0011, &  
16A 0012

Case Nos: 16A 0010, 16A 0013 &  
16A 0014

Decision and Order Affirming the  
Determination of the Morrill County Board  
of Equalization in Cases No. 16A 0009, 16A  
0010, 16A 0011, 16A 0012, and 16A 0013  
And  
Order Dismissing Case No. 16A 0014 With  
Prejudice

**For the Appellant:**

Gerald W. Green, Trustee,  
Betty L. Green Living Trust, and  
Richard R. Green Living Trust.

**For the Appellee:**

Travis Rodak,  
Morrill County Attorney

The appeals were heard before Commissioners Steven Keetle and Nancy Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is made up of six agricultural and horticultural parcels located in Morrill County, Nebraska. The legal description of the Subject Property are found at Exhibits 1-6. The property record cards for the Subject Property are found at Exhibit 7 pages 106-129.

**II. PROCEDURAL HISTORY**

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16A-009 was \$144,025 for tax year 2016. Betty L. Green Living Trust (the Taxpayer) protested this assessment to the Morrill County Board of Equalization (the County Board) and requested an assessed valuation of \$100,249. The Morrill County Board determined that the taxable value of the Subject Property for tax year 2016 was \$144,025.<sup>1</sup>

---

<sup>1</sup> Exhibit 1.

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16A-0010 was \$106,260 for tax year 2016. Richard R. Green Living Trust (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$41,824. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$106,260.<sup>2</sup>

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16A-0011 was \$166,080 for tax year 2016. Betty L. Green Living Trust (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$132,076. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$166,080.<sup>3</sup>

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16A-0012 was \$157,410 for tax year 2016. Betty L. Green Living Trust (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$91,627. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$157,410.<sup>4</sup>

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16A-0013 was \$186,470 for tax year 2016. Richard R. Green Living Trust (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$78,966. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$186,470.<sup>5</sup>

The Morrill County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16A-0014 was \$191,965 for tax year 2016. Richard R. Green Living Trust (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$118,799. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$191,965.<sup>6</sup>

---

<sup>2</sup> Exhibit 4.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 6.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged exhibits. The Commission held a hearing on May 24, 2017.

### III. JURISDICTION

Standing is fundamental to the right to appeal. “In order to have standing to invoke a tribunal’s jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy.”<sup>7</sup> If the person bringing an appeal does not have standing, the appeal must be dismissed.<sup>8</sup>

The owner of a parcel of property would have standing to appeal. All of the evidence in the record before the Commission indicates that the parcel in Case No. 16A 0014 is owned by the State of Nebraska Board of Educational Lands and Funds.<sup>9</sup> Neb. Rev. Stat. § 77-5013 (4) grants the Commission the authority to specify the requirements for the execution of an appeal or petition in the Commission Rules and Regulations. Chapter 5, section 001.05 specifies the persons who may sign an appeal or petition. Gerald W. Green, signee of the appeal, is the Trustee of the Richard L. Green Living Trust and the Betty R. Green Living Trust. An individual who is the Trustee of the Richard L. Green Living Trust and the Betty R. Green Living Trust is not authorized by the Commission to sign an appeal or petition on behalf of the State of Nebraska Board of Educational Lands and Funds pursuant to Chapter 5, Section 001.05.

If the record demonstrated that Gerald Green, the Richard L. Green Living Trust and the Betty R. Green Living Trust otherwise had standing to bring the appeal regarding the property in Case No. 16A 0014 the Commission might have jurisdiction over this appeal. “In order to have

---

<sup>7</sup> Douglas County Board of Commissioners v. Civil Service Commission, 263 Neb. 544, 549, 641 N.W.2d 55, 60 (2002)(Citations omitted).

<sup>8</sup> “Standing relates to a court’s power, that is, jurisdiction, to address issues presented and serves to identify those disputes that are appropriately resolved through the judicial process. *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, 283 Neb. 903, 814 N.W.2d 724 (2012). Under the doctrine of standing, a court may decline to determine the merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination. *Latham v. Schwerdtfeger*, 282 Neb. 121, 802 N.W.2d 66 (2011). The focus is on the party, not the claim itself. *Id.* Standing requires that a litigant have a personal stake in the outcome of a controversy that warrants invocation of a court’s jurisdiction and justifies exercise of the court’s remedial powers on the litigant’s behalf. *Butler Cty. Sch. Dist. v. Freeholder Petitioners, supra; Latham v. Schwerdtfeger, supra.* To have standing, a litigant must assert the litigant’s own rights and interests. *Id.*” *In Re. Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 925-26, 830 N.W.2d 474, 478-79 (2013) (citations omitted).

<sup>9</sup> See, Exhibit 7:126-129.

standing to invoke a tribunal's jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy."<sup>10</sup> Additionally the evidence before the Commission indicates that the real property taxes on the parcel in Case No. 16A 0014 are assessed to The State of Nebraska Board of Educational Lands and Funds.<sup>11</sup> There is no evidence or testimony before the Commission that Gerald Green, the Richard L. Green Living Trust and the Betty R. Green Living Trust are obligated to pay the real property taxes for the parcel in Case No. 16A 0014. The Commission determines that Gerald Green, the Richard L. Green Living Trust or the Betty R. Green Living Trust have not demonstrated that they have standing to bring the appeal in Case No. 16A 0014.

The Commission does not have jurisdiction to hear the appeal in Case No. 16A 0014.

#### IV. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>12</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>13</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>14</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

---

<sup>10</sup> Douglas County Board of Commissioners v. Civil Service Commission, 263 Neb. 544, 549, 641 N.W.2d 55, 60 (2002)(Citations omitted).

<sup>11</sup> See, Exhibit 10:170.

<sup>12</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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).

<sup>13</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>14</sup> *Id.*

arbitrary.<sup>15</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>16</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>17</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>18</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>19</sup> 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.”<sup>20</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>21</sup>

## V. VALUATION LAW

Under Nebraska law,

[a]ctual 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.<sup>22</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 section

---

<sup>15</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>16</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>17</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>18</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>19</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>20</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>21</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>22</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”<sup>23</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>24</sup> 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.<sup>25</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>26</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>27</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). 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.<sup>28</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>29</sup>

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. Agricultural or horticultural purposes includes the following uses of land:

- (a) 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
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.<sup>30</sup>

## VI. 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 this

---

<sup>23</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>24</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>25</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>26</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>27</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>28</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>29</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>30</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

Constitution.”<sup>31</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>32</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>33</sup> 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.<sup>34</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>35</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>36</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>37</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and 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 [sic].”<sup>38</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>39</sup>

## VII. SUMMARY OF EVIDENCE

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.<sup>40</sup> County assessors are required to utilize these LCGs as directed by the Property Tax Administrator.<sup>41</sup> The Property Tax

---

<sup>31</sup> *Neb. Const.*, Art. VIII, §1.

<sup>32</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>33</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>34</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

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

<sup>36</sup> *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).

<sup>37</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>38</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>39</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>40</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), the Property Tax Administrator is the chief administrative officer of the property assessment division of the Department of Revenue, see Neb. Rev. Stat. 77-701 (2014 Cum. Supp.).

<sup>41</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.).

Administrator and the Nebraska Department of Revenue's Property Assessment Division (PAD) has adopted and promulgated Rules and Regulations to carry out their duties pertaining to the classification of agricultural and horticultural land by LCGs.<sup>42</sup> 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.<sup>43</sup> This conversion legend shows the LCGs for each soil in a county whether in grassland, dryland or irrigated cropland.<sup>44</sup>

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.<sup>45</sup> The county assessor is then required to use a soil conversion legend created by PAD to assign agricultural land to an appropriate LCG.<sup>46</sup>

For grassland the LCGs 1G1, 1G, 2G1, 2G, 3G1, 3G, 4G1, and 4G should generally progress from very high yields of forage to very low yields of forage.<sup>47</sup> 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.<sup>48</sup> The regulations also permit county assessors to develop additional LCG sub-classifications if needed to achieve uniform and proportionate valuation.<sup>49</sup> The Taxpayer presented an array of the LCG assignments for the grassland soil types present in Morrill County based on the LCG assignments determined by the PAD compared to the NRCS range production ratings. The array demonstrates that for Morrill County soil types classified as grassland, the LCGs do not progress from very high yields of forage to very low yields of forage indicated by the NRCS range production ratings.<sup>50</sup> The Taxpayer alleges that these LCGs established by the PAD for grassland classification do not meet the requirements of the Nebraska Administrative Code and do not result in assessments that are uniform and proportionate. The LCG assignments for each grassland soil type according to the Rules and Regulations of the Department of Revenue for grassland in Morrill County appear

---

<sup>42</sup> See, Title 350 Neb. Admin. Code ch. 14 (3/09).

<sup>43</sup> Title 350 Neb. Admin. Code ch 14, §004.08B (3/09).

<sup>44</sup> Title 350 Neb. Admin. Code ch 14, §004.08B (3/09).

<sup>45</sup> 350 Neb. Admin. Code, ch. 14, §004.04 (3/2009).

<sup>46</sup> 350 Neb. Admin. Chapter 14Admin. Code, ch. 14, §004.08B (3/2009) It is the Commission's understanding that the conversion legend referenced in this regulation correlates codes contained on NRCS soil maps with LCG categories.

<sup>47</sup> See, Title 350 Neb. Admin. Code ch 14, §§004.08H(9)-004.08H(16) (3/09).

<sup>48</sup> 350 Neb. Admin. Code, ch. 14, §004.08C-H (3/2009).

<sup>49</sup> 350 Neb. Admin. Code, ch. 14, §004.09 (3/2009).

<sup>50</sup> See, E10:27



to be flawed when looking at the NRCS production ratings for each soil type compared to its assigned LCG.

The Taxpayer proposes a valuation methodology which utilizes 12 sales of parcels containing predominantly grassland from Morrill County, Box Butte County, and Sheridan County.<sup>51</sup> The Taxpayer, rather than using the LCGs as determined by the Property Tax Administrator under the Administrative Code, categorized the grassland sales in Morrill County by NRCS range production rating, combining parcels when more than one was involved in the sale and using the average for the parcels involved in each sale.<sup>52</sup> The Taxpayer then utilized the production capability ratings determined by the NRCS to determine the average sale price per AUM<sup>53</sup> for these 12 grassland sales in Morrill County.<sup>54</sup> The Taxpayer determined the median sales price per acre for each of the 12 sales and the median sales price per AUM for all 12 sales.<sup>55</sup> The Taxpayer utilized this data to extrapolate values for each soil symbol based on the sole criteria of sales price per AUM.<sup>56</sup> Real estate appraisal principles hold that “Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”<sup>57</sup> The Taxpayer’s valuation methodology does not make any adjustments to the values for any factor other than capability of production of forage.

The Taxpayer alleged that the assessed values as determined by the Assessor were misleading buyers of grassland in Morrill County. The Taxpayer offered no evidence that buyers of grassland in Morrill County were misled into paying more or less for a parcel of agricultural or horticultural property in Morrill County based on the assessed values.

The Taxpayer alleged that Cherry County had made adjustments to the LCG classifications of certain soil types when determining assessed values of agricultural and horticultural land in Cherry County. This may be so. As noted earlier the regulations adopted by PAD permit county assessors to develop additional LCG sub-classifications if needed to achieve uniform and proportionate valuation, which would indicate that Cherry County could develop additional LCG

---

<sup>51</sup> E10:68-151

<sup>52</sup> E10:67-69, 80-100

<sup>53</sup> Animal Unit Month, see, E10:2

<sup>54</sup> E4:93-121

<sup>55</sup> E10:68-69

<sup>56</sup> E10:69.

<sup>57</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13<sup>th</sup> ed. 2008)

sub-classifications if needed.<sup>58</sup> The Morrill County Assessor however testified that she had no market information to indicate that a reclassification of grassland soil types from the LCG's imposed by the Rules and Regulations of the Department of Revenue was warranted when determining assessed values for Morrill County. The Taxpayer has failed to demonstrate how the actions of the Cherry County Assessor would have any impact on the assessed value of agricultural or horticultural land in Morrill County.

The Assessor testified that she valued the Subject Property in the same way that she valued all agricultural and horticultural property in Morrill County, and that this valuation followed the requirements of law imposed upon her. The Assessor testified that she 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. The Assessor testified that she looked at sales outside of the sales period set by the Property Tax Administrator as trending sales, to determine if her assessed values were correct for the 2016 tax year. The Assessor testified that there were no sales of properties with the same soil types as those on the Subject Property so she utilized her training and experience along with the sales information pertaining to similar rough rocky ridge areas to determine the assessed values for the Subject Property. The Assessor testified that sales of rough rocky ridge areas in and around Morrill County were influenced by factors other than productivity alone.

The Taxpayer acknowledges that there are no sales of properties with similar soil types and topography as the Subject Property in Morrill County. Nebraska Courts have recognized that in cases where there is no sale of like property, actual or market value must be arrived at by theoretical methods commonly used by appraisers qualified in the particular field.<sup>59</sup> The Courts have also held that the appraisal of real estate is not an exact science.<sup>60</sup>

The Taxpayer alleges that the only way to take the flawed LCG's into account when setting assessed values is to reclassify all grassland soil types and utilize the Taxpayer's proposed valuation methodology. The Taxpayer's analysis focused on a single factor, production of forage, as the basis for his entire analysis, alleging that no other factors apply to grassland values in Morrill County.

---

<sup>58</sup> See, 350 Neb. Admin. Code, ch. 14, §004.09 (3/2009).

<sup>59</sup> See, *Lincoln Tel. and Tel. Co. v. York County Bd. of Equal.*, 209 Neb. 465, 476, 308 N.W.2d 515, 522 (1981).

<sup>60</sup> *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

As noted earlier the Assessor testified that she had no market information to indicate that a reclassification of grassland soil types from the flawed LCG's imposed by the Rules and Regulations of the Department of Revenue was warranted when determining assessed values for Morrill County. The Assessor, while acknowledging that production capability is a factor to be considered when valuing grassland, testified that the sales she utilized indicated that there were other factors at work in the market beyond production of forage alone. The Assessor determined the assessed values for grassland in Morrill County based on all of the evidence before her, which included information presented by the Taxpayer regarding his methodology in prior years, and the requirements of law imposed upon her.

The Commission finds that while the Taxpayer has demonstrated that there are flaws in the LCGs classified as grassland determined by the PAD, the Taxpayer has failed to demonstrate that this flaw has resulted in assessed value determinations in Morrill County that are incorrect or grossly excessive and the result of systematic will or failure of a plain legal duty. In an appeal “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 his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.”<sup>61</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>62</sup>

The Taxpayer did not establish by “clear and 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 [sic].”<sup>63</sup>

## VIII. CONCLUSION

In Case Nos. 16A 0009, 16A 0010, 16A 0011, 16A 0012 and 16A 0013 the Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

---

<sup>61</sup> JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting Brenner v. Banner County Bd. Of Equal., 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

<sup>62</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>63</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

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

The Commission does not have jurisdiction to hear the appeal in Case No 16A 0014. For all of the reasons set forth above, the appeals of the Taxpayer are denied.

**IX. ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 16A 0014 is dismissed with prejudice.
2. The decisions of the Morrill County Board of Equalization determining the value of the Subject Property in Case Nos. 16A 0009, 16A 0010, 16A 0011, 16A 0012 and 16A 0013 for tax year 2016 are affirmed.<sup>64</sup>
3. The assessed value of the Subject Property in Case Nos. 16A 0009, 16A 0010, 16A 0011, 16A 0012 and 16A 0013 for tax year 2016 are:

Case No 16A 0009

Land: \$144,025

Total: \$144,025

Case No. 16A 0010

Land: \$106,260

Total: \$106,260

Case No. 16A 0011

Land: \$119,280

Improvements: \$ 46,800

Total: \$166,080

Case No 16A 0012

Land: \$157,410

Total \$157,410

Case No. 16A 0013

Land: \$186,470

Total: \$186,470

---

<sup>64</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Morrill County Treasurer and the Morrill County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2016.
8. This Decision and Order is effective for purposes of appeal on July 18, 2017.<sup>65</sup>

Signed and Sealed: July 18, 2017

---

Steven A. Keetle, Commissioner

SEAL

---

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

---

<sup>65</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.