

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

MID AMERICA AGRI
PRODUCTS/WHEATLAND
INDUSTRIES, LLC
APPELLANT,

V.

PERKINS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 18C 0002,
19C 0003, & 20C 0003

DECISION AND ORDER
REVERSING THE DECISION
OF THE PERKINS COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Fred Stehlik & Zach Lutz-Preifert
Gross, Welch, Marks, Clare.

For the Appellee:

Timothy L Moll
Rembolt Ludtke.

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

I. THE SUBJECT PROPERTY

The Subject Property is a 36.93-acre commercial parcel improved with an ethanol plant, located in Perkins County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Perkins County Assessor determined that the assessed value of the Subject Property was \$16,594,768 for tax year 2018 and \$13,385,246 for tax years 2019 and 2020. Mid America Agri Products/Wheatland Industries, LLC (the Taxpayer) protested these assessments to the Perkins County Board of Equalization (the County Board) and requested taxable values of \$6,800,000, \$7,336,042, and

\$7,115,246, respectively. The County Board determined that the taxable values of the Subject Property as below,

Tax Year	Taxable Value
2018 ¹	\$16,594,768
2019 ²	\$13,385,246
2020 ³	\$13,385,246

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 13, 2021. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1 through 31, 35 through 38, and 42 were admitted into evidence. Exhibits 32, 33, and 34 were not offered into evidence. Exhibits 39, 40, and 41 were not admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁴ 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

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ 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 (2009).

its action.⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or

⁵ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

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.¹¹ 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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

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 the real property and an identification of the property rights valued.¹⁴

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.¹⁵ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁶ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

has the same meaning as assessed value.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

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 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.²³ 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.²⁴ 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

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

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

²⁴ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

failure of plain legal duty, and not mere errors of judgment.²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

Under Nebraska law, real property is defined to include “all land” and “all buildings, improvements, and fixtures, except trade fixtures.”²⁷ Trade fixtures is defined as “machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the property is owned or leased...”²⁸

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Taxpayer offered the testimony of Robert Lundeen, the Taxpayer’s Chairperson and CEO. Lundeen testified that the Subject Property was constructed in approximately 2006 and consists of several buildings housing ethanol production equipment as well as commodity storage tanks. Lundeen stated there were no additional improvements added to the Subject Property during the relevant tax years. He stated the Subject Property uses the Delta-T ethanol extraction technology, and that while newer technologies exist, the Delta-T technology does not prevent the Taxpayer from being competitive with other ethanol plants. Lundeen further testified that in 2018, the ethanol industry in general was in a downturn, with the Subject Property having small profits in 2018, even smaller profits in 2019, and an operating loss in 2020.

Peggy Burton, Perkins County Assessor, testified that she relied upon third-party commercial appraisers, Darrel Stanard and Wayne Kubert, to value the Subject Property. The appraisal used to value the 2018 assessment was performed by Stanard. The subsequent appraisal

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

²⁷ Neb. Rev. Stat. § 77-103 (Reissue 2018).

²⁸ Neb. Rev. Stat. § 77-105 (Reissue 2018).

performed by Wayne Kubert had a retrospective effective date of January 1, 2018.²⁹ Burton testified at the hearing that based upon Kubert's appraisal, she believed that the proper taxable value for the Subject Property for tax year 2018 to be \$13,400,000.

The Taxpayer called its appraiser, Joseph Calvanico, to testify.³⁰ Calvanico testified that in developing his value opinion, he did not employ the income approach, as he could find no evidence of a rental market for ethanol plants, as they are generally special-use industrial, owner-occupied properties. Calvanico stated that without a rental market the income approach would not be applicable.

Calvanico stated that his valuation relied mainly upon the cost approach. In reaching his valuation, he stated that he began with the Marshall Valuation Service manual to determine baseline replacement costs for the improvements on the Subject Property.³¹ Calvanico then calculated physical depreciation based upon a 50-year useful life and Marshall Valuation Service guidelines. He assigned a 20% functional obsolescence to certain buildings, primarily the processing, fermentation, and DD&E buildings,³² based upon his subjective belief that these particular buildings would likely require alterations to adapt to newer ethanol technology or to suit a different purpose.

Calvanico testified that economic obsolescence negatively affected the overall value of the Subject Property. He set economic depreciation at 40%, 45%, and 50% for tax years 2018, 2019, and 2020, respectively. Calvanico stated that he reached these values based upon his market analysis of the ethanol industry as a whole and a purported lack of marginal productivity.³³

The County Board called its appraiser, Wayne Kubert, to testify. Kubert provided a value estimate using each of the three approaches to

²⁹ Exhibit 20:2.

³⁰ Calvanico's curriculum vitae is found at Exhibit 35:72-74.

³¹ Exhibit 35:57.

³² Exhibit 35:60.

³³ Exhibit 35:43-46.

value. In developing his cost approach analysis, Kubert stated that he used the Marshall Valuation Service manual, with adjustments to those figures based upon his over 40 years of appraisal experience. Once he had determined a subtotal replacement-cost-new (RCN) Kubert stated that he applied a 1.162 multiplier³⁴ to account for location, quality, and change-over-time factors. A life expectancy value was then assigned based upon the building,³⁵ and physical depreciation was calculated using that value.³⁶ Kubert then assigned a 10% functional obsolescence to the entire Subject Property due to its use of the older Delta-T technology.³⁷ Lastly, Kubert assigned a 10% economic depreciation based upon his analysis of the ethanol market.³⁸ Kubert's value estimate using this method was \$11,790,000.³⁹

Kubert's sales approach analysis considered nine other ethanol plants in Nebraska, Iowa, North Dakota, and Minnesota which he believed were adequately comparable to the Subject Property.⁴⁰ Based upon the sales comparisons and adjustments, Kubert provided a value estimate of \$13,441,000 using this approach.⁴¹

Kubert then testified regarding his income capitalization approach.⁴² Kubert stated he was unable to use the historical income and expense data, as it was not provided to him. However, he did have possession of historical income/expense data from several other ethanol plants which he used to create this valuation.⁴³ Ultimately, Kubert's valuation under this method was \$14,200,000.⁴⁴ After a reconciliation of the three approaches, Kubert provided a final estimated value of the

³⁴ Exhibit 20:60.

³⁵ Exhibit 20:64.

³⁶ *Id.*

³⁷ Exhibit 20:63-64.

³⁸ Exhibit 20:63-64, Exhibit 20:113-24.

³⁹ Exhibit 20:65.

⁴⁰ Exhibit 20:66-83.

⁴¹ Exhibit 20:82.

⁴² Exhibit 20:84-94.

⁴³ Exhibit 20:86.

⁴⁴ Exhibit 20:94.

Subject Property as \$13,400,000.⁴⁵

B. Analysis

a. The Parties' Appraisers.

Both Kubert and Calvanico are trained and certified real property appraisers. Kubert has been a full-time appraiser for over 40 years. He holds the MAI designation from the Appraisal Institute and is licensed in Nebraska and holds or has held a temporary license in fifteen other states. Kubert's experience includes appraising commercial and industrial real estate, including other ethanol plants.⁴⁶

Calvanico has been an appraiser for nearly 35 years. He also holds the MAI designation from the Appraisal Institute. He currently holds a temporary Nebraska appraisal license and holds or has held a license in seven other states. Calvanico has experience in large commercial property appraisal, personal property appraisal, and business valuation.⁴⁷ Calvanico also has experience in appraising other ethanol plants, including an ethanol plant in Cambridge, Nebraska.

Both appraisers have certified their appraisals to be compliant with the Uniform Standards of Professional Appraisal Practice.⁴⁸ When an independent appraiser using professionally accepted appraisal methods certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.⁴⁹ Because the Appellant provided competent evidence of actual value, the County Board's presumption of validity has been overcome. Since the Taxpayer has overcome the presumption of validity by competent evidence, "the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all of

⁴⁵ Exhibit 20:96.

⁴⁶ Exhibit 20:98-101.

⁴⁷ Exhibit 35:72.

⁴⁸ Exhibit 20:12-13; Exhibit 35:71.

⁴⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

the evidence presented. . .”⁵⁰

b. The Appraisals’ Approaches to Value

Nebraska law provides that actual value for real property may be determined using, but not limited to, the sales comparison approach, income approach, and cost approach.⁵¹ It is not required that an appraiser provide a valuation estimate using all three methods.

Kubert’s appraisal considered all three approaches to value and provided a value estimate reconciling all three approaches; and provides a final valuation weighing all three approaches. Calvanico, on the other hand, considered all three methods, but determined that the sales approach should not be afforded significant weight due to the lack of recent comparable sales. He also determined that the income approach would not be appropriate for the Subject Property as Calvanico could not identify any rental income derived from the Subject Property, or ethanol plants more generally. As a result, Calvanico found the cost approach to be the best indicator of value.

As the Subject Property is an owner-occupied industrial facility, the Commission will give no weight to an income approach, and will afford some weight to the sales approach. The Commission finds the cost approach provides the best indicator of actual value for the Subject Property.

Neither party has demonstrated the existence of a rental market for the Subject Property or other ethanol plants. It is the rental income derived from the creation of lesser estates in land that is the basis for the income approach to value. As Kubert’s income analysis relies upon the nameplate production capacity, and admittedly does not identify

⁵⁰ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 644-45, 935 N.W.2d 764, 769-70 (2019) (citing *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 941-42, 911 N.W.2d 551, 558 (2018)).

⁵¹ Neb. Rev. Stat. § 77-112 (Reissue 2018) (“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.”).

any rental income for the Subject Property, the Commission affords this approach no weight. As both appraisals do provide a cost-approach analysis for the Subject Property, we will consider that approach to determine the reasonableness of the respective valuations.

c. Comparing the Cost Approaches of the Appraisals

Both appraisers provided a listing of the improvements present on the Subject Property. These are identified using similar, but not identical, nomenclature. The buildings include a main office building with 1,585 sq. ft. in Kubert’s report and 1,575 sq. ft. in Calvanico’s report;⁵² a grain receiving building;⁵³ a main processing building;⁵⁴ as well as various other improvements. A complete list of improvements from each appraiser follows:

CALVANICO APPRAISAL⁵⁵	KUBERT APPRAISAL⁵⁶
Office	Office at scales
Office/MCC	Grain Receiving
Fire Suppr.	Wet Distillers Grain Pad and Loadout
Processing	Main Building
Fermentation	Grain Movement
Main Shop	Grain Storage
Elec. Shop	Water Treatment Building & Fire Water Tank
DD&E	Cooling Tower (Base Only)
Boiler	Hammer Mill Structure
Grain Rec.	Boiler Building

⁵² Exhibit 20:32; 35:62.

⁵³ Exhibit 20:33 (listing as 5,600 sq. ft.); 35:62 (listing as 5,375 sq. ft.).

⁵⁴ Exhibit 20:35-36 (listing as 45,333 sq. ft. including office space, lab space, and storage tanks); 35:62 (listing as 22,000 sq. ft. with tanks and office space listed separately).

⁵⁵ Exhibit 35:62.

⁵⁶ Exhibit 20:31; 20:57-59

Material Storage Shed	DD&E Structure
Material Storage Shed (#2)	Steel Storage Buildings and Shops (6 Buildings)
Bio-Diesel	Office Building at Front Entrance
Equipment	Truck Scale
Electrical Equipment	Rail Scale
Concrete Pad/DDGS Concrete	Receiving Building Including Pits and Rail
Truck Scale	Grain Handling
Rail Scale	Water Treatment Building
Rail Trackage	Boiler Building
Grain Leg	Foundations Fermenters & Beer Well
Drag Conveyor	Steel Water Tank
Receiving Tunnel	Finish Product (Ethanol)
Containment Pit	Retention at truck, rail loadout, at Biodiesel tanks and at Chemical Tanks
Wielded Steel Tanks	Retention at Tank Farm
Grain Tanks	Truck Loading Area 6
Water Cooling Tower	Rail Siding 4
Additional Concrete	Main Line Switches
	On Site Switches 4
	Ground Preparation for Rail Siding, Asphalt Roads and Buildings 6
	Rough Grade and Drainage Structures and Drainage to Creek 5

	Water Lines on Site from Wells to Buildings & for Fire Lines 1
	Sewer Lines on Site
	Two Water Wells 2
	Concrete and Asphalt Drives and Slabs 3
	Gravel Drives 5
	Gravel Surface on Site 5
	Natural Gas Line on and off Site 1
	Electrical Service on Site 1
	Septic System 1
	Process Pipe Racks
	Rail Loadout Area and Steel Stand 4

Calvanico's appraisal report separates the various buildings and provides a square footage measurement, the year of construction, a class and quality rating based upon each building's framing type and quality,⁵⁷ and then a base cost per square foot based upon the Marshall Valuation Service for the applicable tax year with citation to the section and page.⁵⁸ Calvanico then adjusted the base cost if fire suppression sprinklers were present. Next, a current cost multiplier and local cost multiplier were used to reach an adjusted base cost for each building. When multiplied by the square footage, a replacement-cost-new (RCN) was calculated. The total RCN of the buildings and site improvements in 2018 is \$15,900,865.⁵⁹ The total RCN in 2019 is

⁵⁷ Exhibit 35:57-58.

⁵⁸ Exhibit 35:62-64.

⁵⁹ Calculated from RCN values provided in Exhibit 35:62.

\$15,900,865.⁶⁰ The total RCN for 2020 is \$15,525,021.⁶¹

Kubert's appraisal report also provides a Marshall Valuation Service citation for the majority of the improvements.⁶² Kubert provides a total unadjusted cost of \$17,301,806.⁶³ He then uses a further adjustment to account for location, quality, and change over time to reach a total estimated cost new of \$20,104,698.⁶⁴

However, Kubert's valuation also includes several adjustments based upon "the experience of the appraiser."⁶⁵ While Kubert is undoubtedly a highly skilled and experienced appraiser, without an additional factual basis or further explanation as to the basis and magnitude of the adjustments, the Commission affords less weight to his valuations. It is well established that "the value of the opinion of an expert witness is no stronger than the facts upon which it is based."⁶⁶ Therefore, we find that Kubert's RCN calculations were unreasonable.

d. Physical Depreciation

"Physical depreciation is loss in value due to physical deterioration."⁶⁷ Both appraisers note that most of the Subject Property improvements were built between 2006 and 2007. Kubert's appraisal report found the improvements "are generally in average or above condition."⁶⁸ Kubert testified that he assigned a functional life for each building, then calculated the percentage of depreciation based upon the ratio of the building's age to its functional life. Kubert testified that he generally assigns a 40-year functional life to

⁶⁰ Calculated from RCN values provided in Exhibit 35:63.

⁶¹ Calculated from RCN values provided in Exhibit 35:64.

⁶² Exhibit 20:55-56.

⁶³ Exhibit 20:60.

⁶⁴ *Id.*

⁶⁵ Exhibit 20:55-56.

⁶⁶ *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998). See *McArthur v. Pappio-Missouri River NRD*, 250 Neb. 96, 547 N.W.2d 716 (1996); *Lindsay Mfg. Co. v. Universal Surety Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994).

⁶⁷ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

⁶⁸ Exhibit 20:62.

improvements. However, Kubert assigned a shorter 30-year life to certain buildings based upon wear and tear caused by the grain delivery trucks. This resulted in a physical depreciation percentage between 20% to 40% depending upon the building. Kubert applied this percentage to all three relevant tax years.⁶⁹

Similarly, the Calvanico appraisal applies a similar methodology using the ratio of the building's actual age and a 50-year life expectancy. Calvanico testified that the life expectancy of the buildings was based upon the Marshall Valuation Service manual, and as the buildings were of similar construction, the same 50-year expectancy was assigned. This results in a physical deterioration percentage "for 2018-2019 at 24%-26% for the older buildings and 8%-10% for the newer buildings; and for 2020 at 26%-28% and 10%-12%."⁷⁰

Therefore, the Commission finds the Calvanico appraisal to be clear and convincing evidence of physical depreciation for the improvements upon the Subject Property.

e. Functional Depreciation

Regarding functional depreciation, Kubert assigned a 10% functional obsolescence to the real estate and equipment present on the Subject Property based upon his opinion that "the functional utility is considered to be inferior..."⁷¹ Kubert testified that he arrived at the 10% figure based upon his experience as an appraiser and advances in processing technology.

To the contrary, Calvanico's appraisal limited the application of a 20% functional obsolescence to only the processing, fermentation, and DD&E buildings.⁷² Calvanico asserts that this obsolescence is due to the differences in the Delta-T design of the Subject Property versus the superior ICM design and based his 20% figure upon a third-party

⁶⁹ Exhibit 20:64.

⁷⁰ Exhibit 35:60.

⁷¹ Exhibit 20:63.

⁷² Exhibit 35:62-64.

analysis conducted by Energetix.⁷³

The Commission finds the Calvanico appraisal to be clear and convincing evidence that a 20% functional depreciation should be applied only to the processing, fermentation, and DD&E buildings on the Subject Property to reflect the best indication of actual value of the Subject Property.

f. Economic Depreciation

Economic depreciation results from external economic forces which depress the value of the property.⁷⁴ Both Kubert's⁷⁵ and Calvanico's⁷⁶ reports contain detailed discussions of the ethanol industry. Kubert assigned a 10% economic obsolescence based upon his assessment of the uncertainty in the ethanol market. Kubert's discussion of the relevant market factors include discussion of the fluctuation in the price of corn, fluctuations in the prices of crude oil and gasoline, as well as governmental actions influencing the demand for ethanol.

Calvanico's 40%, 45%, and 50% economic obsolescence values were based upon the national price of ethanol and the marginal contribution derived from one bushel of corn.⁷⁷ However, Calvanico's report contains sparse explanation of the data underlying these conclusions. The charts included in the report indicating changes in marginal contribution and price-per-gallon of ethanol seem to show an increase in value between January 2019 and January 2020. This does not support the assertion of an additional 5% depreciation over the same time frame. Further, Calvanico's report makes continued reference to the sharp decline in the ethanol market due to the COVID-19 pandemic. This discussion of events in March 2020 and beyond are outside the scope of the relevant time period – the value of the Subject

⁷³ Exhibit 35:60.

⁷⁴ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 647, 935 N.W.2d 764, 771 (2019).

⁷⁵ Exhibit 20:63, 20:113-24.

⁷⁶ Exhibit 35:44-46, 35:61.

⁷⁷ Exhibit 35:45.

Property on January 1, 2018, January 1, 2019, and January 1, 2020.

The Commission, therefore, finds the Kubert report provides clear and convincing evidence of the level of economic obsolescence that should be applied to the Subject Property.

g. Reconciling the Improvement Values

As the Commission finds the Calvanico report to be a better indicator of replacement-cost-new, physical depreciation and functional obsolescence, but finds the Kubert report to be the better indicator of economic obsolescence, the ultimate opinions of value from either report do not reflect the Commission's finding as to the actual value of the Subject Property for tax years 2018, 2019, or 2020.

The Commission finds the actual value of the improvements upon the Subject Property to be \$9,832,729 for tax year 2018, \$9,680,417 for tax year 2019, and \$9,148,501 for tax year 2020.⁷⁸

h. Land Value

The land value of the Subject Property is also in dispute, as the County Board, Kubert, and Calvanico all reach different conclusions. Calvanico's approach examines the Subject Property as a combination of three different parcels owned by the Taxpayer, despite the fact that only the 36.93-acre parcel has been appealed. Calvanico's approach examines several parcels of agricultural land as comparable properties, reaching an ultimate land value of \$1,600 per acre.⁷⁹ As applied to the

⁷⁸ The Commission reaches these values by utilizing the replacement-cost-new (RCN) figures provided in the Calvanico report at Exhibit 35:62-64 for each respective tax year. The Commission adopts Calvanico's methodology in applying the physical deterioration for each building and site improvements, as well as the 20% functional obsolescence applied to the processing, fermentation, and DD&E buildings. Exhibit 35:62-64 provides a subtotal for these calculations before any economic obsolescence is applied. The sum of these subtotals is \$10,925,254 for tax year 2018, \$10,756,019 for tax year 2019, and \$10,165,001 for tax year 2020. Rather than applying the economic obsolescence figures provided by Calvanico, the Commission applies a 10% economic obsolescence factor, resulting in the above values (rounded to the nearest dollar).

⁷⁹ Exhibit 35:56. Calvanico ultimately valued the Subject Property land value at \$277,000. However, this figure is calculated using a 173.11-acre parcel size.

36.93-acre parcel size in dispute, this would result in a land value of \$59,088.

Calvanico’s selected comparable properties are not zoned “Agricultural-Transitional,” as is the Subject Property. Calvanico states that no adjustments were made to account for the difference in zoning.⁸⁰ Additionally, the selected comparable properties were all far greater in size than the 36.93 acres at issue. For these reasons, the Commission finds that the Appellant has not provided clear and convincing evidence that the County Board’s land valuation was arbitrary or unreasonable. The Commission affirms the County Board’s valuation on that issue.

VI. CONCLUSION

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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board’s determinations of taxable value were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of the County Board are vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Perkins County Board of Equalization determining the taxable value of the Subject Property for tax years 2018, 2019, and 2020 are vacated and reversed.
2. The assessed values of the Subject Property for each of the tax years are as follows:

Tax Year	Land	Improvements	Total
2018	\$115,246	\$9,832,729	\$9,947,975

⁸⁰ Exhibit 35:57.

2019	\$115,246	\$9,680,417	\$9,795,663
2020	\$115,246	\$9,148,501	\$9,263,747

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Perkins County Treasurer and the Perkins 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 years 2018, 2019, and 2020.
7. This Decision and Order is effective for purposes of appeal on January 17, 2023.⁸¹

Signed and Sealed: January 17, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁸¹ 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.