

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

REISS FARMS, INC.,	)	
	)	
Appellant,	)	CASE NOs. 04A-39, 04A-40, 04A-41,
	)	04A-42, 04A-43, 04A-44, 04A-45,
vs.	)	04A-46, 04A-47, 04A-48, 04A-49,
	)	and 04A-50
HARLAN COUNTY BOARD OF	)	
EQUALIZATION,	)	
	)	DECISION AND ORDER
Appellee.	)	AFFIRMING THE DECISIONS OF THE
	)	HARLAN COUNTY BOARD OF
	)	EQUALIZATION
	)	

The above-captioned cases were called for a hearing on the merits of the appeals by Reiss Farms, Inc., to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 S. 2nd, in the City of Kearney, Buffalo County Nebraska, on July 27, 2005, pursuant to a Notice and Order for Hearing issued May 10, 2005. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Leland D. Reiss, Director of Reiss Farms, Inc., appeared at the hearing on behalf of Reiss Farms, Inc. ("the Taxpayer") without counsel.

The Harlan County Board of Equalization ("the County Board") appeared through counsel, Bryan S. McQuay, Esq., the County Attorney for Harlan County, Nebraska.

The Commission took statutory notice over objections of the Taxpayer's director, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003, as amended by 2005, Neb. Laws L.B. 15 §10) to state its final decision concerning an appeal, with findings of

fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

## **I. STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate that the decision of the County Board was incorrect and arbitrary or unreasonable. Neb. Rev. Stat. §77-5016(8)(Cum. Supp. 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The presumption created by the statute can be overcome if the Taxpayer shows by clear and convincing evidence that the County Board either failed to faithfully perform its official duties or that the County Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). It is the Taxpayer's burden to overcome the presumption with clear and convincing evidence of more than a difference of opinion. *Garvey Elevators, Inc v. Adams County Bd. of Equalization* , 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the County Board was unreasonable. *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

## **II. FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in Harlan County, Nebraska ("the subject property") as described in paragraph 2 below.

2. Eighty percent of the actual or fair market value of the agricultural land and horticultural land, together with the actual value of improvements and land other than agricultural and horticultural land, if any, comprising each parcel of the subject property placed on the assessment roll as of January 1, 2004, ("the assessment date") by the Harlan County Assessor was as follows:

Case No. 04A-39

Subject Property Description: W $\frac{1}{2}$  and NE $\frac{1}{4}$ , Section 5, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$648,665.00	\$505,900.00	\$648,665.00
Farm Site	\$2,500.00		\$2,500.00
Improvement	\$34,785.00	\$30,000.00	\$28,010.00
Total	\$685,950.00	\$535,900.00	\$679,175.00

Case No. 04A-40

Subject Property Description: SW $\frac{1}{4}$ , Section 14, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$177,670.00	\$142,205.00	\$177,670.00
Road	-0-		-0-
Total	\$177,670.00	\$142,205.00	\$177,670.00

## Case No. 04A-41

Subject Property Description: SE $\frac{1}{4}$ , Section 22, Township 4 North, Range 17 West, 6<sup>th</sup> PM,  
Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$155,240.00	\$123,150.00	\$155,240.00
Waste	\$200.00		\$200.00
Road	-0-		-0-
Total	\$155,440.00	\$123,150.00	\$155,440.00

## Case No. 04A-42

Subject Property Description: SW $\frac{1}{4}$ , Section 23, Township 4 North, Range 17 West, 6<sup>th</sup> PM,  
Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$192,835.00	\$163,200.00	\$192,835.00
Home Site	\$7,000.00		\$7,000.00
Farm Site	\$3,000.00		\$3,000.00
Improvement	\$507,695.00	\$202,134.00	\$494,345.00
Total	\$710,530.00	\$365,334.00	\$697,180.00

## Case No. 04A-43

Subject Property Description: SE¼, Section 24, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$216,405.00	\$165,715.00	\$216,405.00
Road	-0-	-0-	-0-
Total	\$216,405.00	\$165,715.00	\$216,405.00

## Case No. 04A-44

Subject Property Description: W½NE¼, Section 26, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$106,940.00	\$93,600.00	\$106,940.00
Road	-0-		-0-
Total	\$106,940.00	\$93,600.00	\$106,940.00

## Case No. 04A-45

Subject Property Description: NE¼, Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$203,250.00	\$157,905.00	\$203,250.00
Road	-0-		-0-
Total	\$203,250.00	\$157,905.00	\$203,250.00

## Case No. 04A-46

Subject Property Description: NW¼ + FCL W½SW¼, Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$320,485.00	\$244,085.00	\$320,485.00
Road	-0-		-0-
Waste	\$100.00		\$100.00
Total	\$320,585.00	\$244,085.00	\$320,585.00

## Case No. 04A-47

Subject Property Description: E½SW¼, Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$118,440.00	\$89,615.00	\$118,440.00
Road	-0-		-0-
Total	\$118,440.00	\$89,615.00	\$118,440.00

## Case No. 04A-48

Subject Property Description: SE¼, Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$222,460.00	\$169,615.00	\$222,460.00
Road	-0-	-0-	-0-
Total	\$222,460.00	\$169,615.00	\$222,460.00

## Case No. 04A-49

Subject Property Description: SE<sup>1</sup>/<sub>4</sub>, Section 28, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$221,755.00	\$175,785.00	\$221,755.00
Road	-0-		-0-
Waste	\$100.00		\$100.00
Total	\$221,855.00	\$175,785.00	\$221,855.00

## Case No. 04A-50

Subject Property Description: SE<sup>1</sup>/<sub>4</sub>, Section 29, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$133,255.00	\$100,470.00	\$133,255.00
Road	-0-	-0-	-0-
Total	\$133,255.00	\$100,470.00	\$133,255.00

3. The Taxpayer timely protested those values to the County Board and proposed values as shown above. (E1 through E12).
4. The County Board denied and granted the protests in part and determined values as shown above. (E1 through E12)
5. The Taxpayer timely filed appeals of those decisions to the Commission.
6. The County Board was served with Notices in Lieu of Summons, and answered those Notices after Motions for Leave to File Out of Time were granted by the Commission.
7. The Taxpayer's appeals were consolidated for hearing by order of the Commission.

8. A Notice and Order for Hearing issued on May 10, 2005, set a hearing of the Taxpayer's appeals for July 27, 2005, at 3:00 p.m. CDST.
9. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Notice and Order for Hearing was served on all parties.
10. The Taxpayer's director offered the prior year's taxable value as his opinion of taxable value as of the assessment date for many of the parcels.
11. Two of the parcels are improved. Improvements to the SW $\frac{1}{4}$  of section 23, Township 4, Range 17 west 6<sup>th</sup> PM are extensive.
12. The Taxpayer' director did not substantiate any opinion of value offered for any parcel
13. The Taxpayer has not adduced sufficient, clear and convincing evidence to overcome the statutory presumption in favor of the County Board.
14. Based on the entire record before it, the Commission finds and determines that eighty percent of the actual or fair market value of the agricultural land and horticultural land together with the actual value of improvements and land other than agricultural and horticultural land, if any, comprising each parcel of the subject property described in the case files for the tax year 2004 is:

Case No. 04A-39

Subject Property Description: W $\frac{1}{2}$  and NE $\frac{1}{4}$ , Section 5, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	\$651,165.00
Improvements	<u>\$ 28,010.00</u>
Total	<u>\$679,175.00</u>



## Case No. 04A-40

Subject Property Description: SW $\frac{1}{4}$ , Section 14, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$177,670.00</u>
Total	<u>\$177,670.00</u>

## Case No. 04A-41

Subject Property Description: SE $\frac{1}{4}$ , Section 22, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$155,440.00</u>
Total	<u>\$155,440.00</u>

## Case No. 04A-42

Subject Property Description: SW $\frac{1}{4}$ , Section 23, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	\$202,835.00
Improvements	<u>\$494,345.00</u>
Total	<u>\$697,180.00</u>

## Case No. 04A-43

Subject Property Description: SE $\frac{1}{4}$ , Section 24, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$216,405.00</u>
Total	<u>\$216,405.00</u>

## Case No. 04A-44

Subject Property Description: W $\frac{1}{2}$ NE $\frac{1}{4}$ , Section 26, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$106,940.00</u>
Total	<u>\$106,940.00</u>

## Case No. 04A-45

Subject Property Description: NE $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$203,250.00</u>
Total	<u>\$203,250.00</u>

## Case No. 04A-46

Subject Property Description: NW $\frac{1}{4}$  + FCL W $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$320,585.00</u>
Total	<u>\$320,585.00</u>

## Case No. 04A-47

Subject Property Description: E $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska

Land	<u>\$118,440.00</u>
Total	<u>\$118,440.00</u>

## Case No. 04A-48

Subject Property Description: SE $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$222,460.00</u>
Total	<u>\$222,460.00</u>

## Case No. 04A-49

Subject Property Description: SE $\frac{1}{4}$ , Section 28, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$221,855.00</u>
Total	<u>\$221,855.00</u>

## Case No. 04A-50

Subject Property Description: SE $\frac{1}{4}$ , Section 29, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$133,255.00</u>
Total	<u>\$133,255.00</u>

15. The taxable values for the various parcels of the subject property for the assessment date as determined by the County Board are supported by the evidence.
16. The decisions of the County Board were correct and neither arbitrary nor unreasonable.
17. The decisions of the County Board should be affirmed.

### III.

#### CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those

identified in the Commission's rules and regulations or Section 77-5016 (3). Neb. Rev. Stat. §77-5016(3) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9).

4. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
5. Agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201(2)(Reissue 2003).
6. Agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. 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. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359(1)(Reissue 2003)
7. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359(2)( Reissue 2003).

8. “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.” Neb. Rev. Stat. §77-112 (Reissue 2003).
9. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Neb. Rev. Stat. §77-112 (Reissue 2003).
10. “Actual value, market value, and fair market value mean exactly the same thing.”  
*Omaha Country Club v. Douglas County Board of Equalization et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 8241 ( 2002).
11. The Taxpayer must adduce evidence establishing that the action of the County Board was incorrect and unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp 2004, as amended by 2005 Neb. Laws L.B. 15 §9). The Nebraska Supreme Court, in considering similar language, has held that “There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, 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.” *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
12. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
  13. The term "unreasonable" can be applied to a decision of an administrative agency only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
  14. The Court has also held that “In an appeal to the county board of equalization or to [the Tax Equalization and Review Commission] and from the [Commission] to this court, 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.” *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523, (2001).
  15. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
  16. “It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board

must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization.” *AT & T Information Systems, Inc. v. State Bd. of Equalization and Assessment*, 237 Neb. 591, 595, 467 N.W.2d 55, 58, (1991). “An owner who is familiar with his property and knows its worth is permitted to testify as to its value.” *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581, (1999).

17. The prior year’s assessment is not relevant to the subsequent year’s valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988).

#### **IV. DISCUSSION**

The Taxpayer raised a variety of issues and concerns in its protests to the County Board and in its Appeals filed with the Commission. Many of the issues raised are applicable to each appeal or are general in nature and discussion of the issues raised specifically for each appeal is unnecessary with four exceptions.

Two exceptions concern appeals 04A-41 and 04A-50. In appeal 04A-41 a claim was made that the parcel was highly erodible and in appeal 04A-50 a claim was made that the parcel was subject to flooding. No evidence was produced concerning the erodible nature of the parcel described in appeal for Case No. 04A-50 or the protest to the County Board. Photographs of the parcel described in Appeal 04A-50 showing water on the land were received. The parcel in the

photographs is not described in the Appeals subject to this decision and order. The protest form alleges that the parcel is “subject to lowland flooding when it rains a lot”. (E18:2). No evidence was presented to quantify an adjustment to the taxable value of the parcel for flooding. The opinion of value given by the Taxpayer’s director was the prior years tax valuation. As noted above prior years valuations are not relevant to determination of taxable value in a subsequent year. The Commission is unable to determine what adjustment should be made to the taxable values of the parcels described in Appeals 04A-41 and 04A-50 based on the specific conditions described by the Taxpayer or its director.

Two exceptions concern the parcels described in the Appeals 04A-39 and 04A-42. Both parcels are improved. The County Board had reduced the taxable value of improvements on the parcel described in Appeal 04A-39 to a level below that requested by the Taxpayer in its protest. (E16:2). No evidence was presented concerning the value of improvements on that parcel. Improvements on the parcel described in Appeal 04A-42 are extensive. (E19:5 & 6). The Taxpayer’s director testified that in general the grain bins on the parcel are overvalued and that the large bin values are substantially overstated. The Taxpayer’s director testified that the bins could not be sold for the value assigned to them by the County Board. The Taxpayer’s director did not offer an opinion of value for any bin. The Taxpayer’s director testified that grain dryers have a limited life, not over 10 years, and that the value of the grain dryer shown as item 33 in Exhibit 19 at page 6 is overstated. The evidence before the Commission is not sufficient to determine that the value placed on the improvements was incorrect and either unreasonable or arbitrary.



The Taxpayer alleged in several appeals that time allotted by the County Board for consideration of its protests was insufficient. In some appeals the Taxpayer's objection was that the County Board considered and took action on its appeals without a representative of the Taxpayer present. If the County Board actions were invalid for the reasons stated by the Taxpayer relief granted by the Board would be stricken and the higher values determined by the Assessor reinstated. For reasons that will become apparent in later discussion that result would be contrary to the interests of the Taxpayer. The Commission has not been able to discover any statute, rule or regulation or decision of a Court in support of the Taxpayer's objections.

The Taxpayer asserted that actions of the County Board are suspect because no supervisor lives in Market Area 1 nor does any supervisor own property in that market area. The Taxpayer's director asserted that the circumstances amounted to taxation without representation. The maxim of taxation with representation is not found in the constitution and is to be strictly construed. *Ratigan v. Davis* 175 Neb. 416, 122 N.W.2d 12 (1963). The Nebraska Supreme Court has held that any representation including representation by a person who authorizes others to tax is sufficient. *Id.* These appeals are further complicated by the fact that the Taxpayer is a corporation and could not vote in any event. There is not evidence, however, that every registered voter in Market Area 1 was precluded from voting for someone on the County Board of equalization and Taxpayer's claim does not support relief.

The Taxpayer asserted that land in Market Area 1 should not have a higher value than land in Market Area 3 because Market Area 1 had restrictions on the use of water and a greater depth to water which increased pumping costs. The Taxpayer's director testified that water restrictions were not imposed on the area within Market Area 1 until after the assessment date

and were not a factor in valuation as of the assessment date. While it is rational to conclude that pumping costs would influence the actual value of irrigated land other factors such as productivity, proximity to markets, slope and other factors also influence value. The Assessor had developed taxable values for Market Area 1 and for Market Area 3 based on sales. The sales roster was introduced as Exhibit 44. The Taxpayer's director testified that some of the sales described in Exhibit 44 were not arms length transactions or were influenced by tax considerations specifically Section 1031 of the Internal Revenue Code. The Taxpayer's director when asked identified only one sale that he deemed questionable. The evidence does not support the Taxpayer's contention.

All of the subject property is in Antelope Township of Harlan County. The township is bordered by Phelps County on the North and Franklin County on the East. (E56:2). The Taxpayer contended that parcels comparable to the subject property would have a lower taxable value in Phelps County. While evidence of the taxable value of specific parcels was not introduced land valuation group value tables for both counties were introduced. (E28 and E56). In addition a table showing land valuation group values for the Area 7 AHLVB was introduced. (E31). That table shows 2004 land valuation group (LVG) values for Harlan, Phelps and Franklin counties by market area as applicable. An examination of that table shows that for irrigated land only one LVG in Franklin county had a lower per acre value than an LVG for irrigated land in Market Area 1 of Harlan County. That LVG is 3A1. (E31). Phelps county has two market areas. (E56:2). Both Market Areas border Harlan County. (E56:2). Land valuation group irrigated values for Market Area 2 in Phelps County generally below the LVG irrigated values for Market Area 1 in Harlan County. (E31) The LVG values for irrigated land in Market area 1 of

Phelps County are generally above the irrigated LVG values for Market Area 1 in Harlan County. (E31). A small portion of Market Area 2 in Phelps County shares a border with Market Area 1 in Harlan County. (E56:2). In addition, none of the parcels in the subject property are in a township bordering Market Area 2 in Phelps County. The taxable values of any comparable properties would have been determined using the values show in the tables. Given the values in the tables it is necessary to postulate an irrigated parcel with a specific mix of soil types and distribution in Phelps County Market Area 1 to arrive at a taxable value for that parcel lower than the taxable value for a comparable irrigated tract in Harlan County Market Area 1.

The opinions of taxable value offered by the Taxpayer's director for most of the parcels was the 2003 taxable value. The use of parcels for which the 2003 taxable value was not suggested as the 2004 taxable value had changed from dry land to irrigated. 2003 Taxable values are not relevant to a determination of taxable values for the year 2004. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201,206 (1988). The taxable values suggested for the parcels on which a change of use occurred were not supported sales of comparable property or other evidence.

The Commission is unable to determine based on the evidence presented to it that the decisions of the County Board were incorrect or unreasonable or arbitrary.

**V.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

1. That the decisions of the County Board determining eighty percent of the actual or fair market value of the agricultural land and horticultural land for each parcel of the subject property described in the appeals as of the assessment date, January 1, 2004, as follows:

Case No. 04A-39

Subject Property Description: W $\frac{1}{2}$  and NE $\frac{1}{4}$ , Section 5, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	\$651,165.00
Improvements	\$ 28,010.00
Total	<u>\$679,175.00</u>

Case No. 04A-40

Subject Property Description: SW $\frac{1}{4}$ , Section 14, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$177,670.00</u>
Total	<u>\$177,670.00</u>

Case No. 04A-41

Subject Property Description: SE $\frac{1}{4}$ , Section 22, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$155,440.00</u>
Total	<u>\$155,440.00</u>

## Case No. 04A-42

Subject Property Description: SW $\frac{1}{4}$ , Section 23, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	\$202,835.00
Improvement	<u>\$494,345.00</u>
Total	<u>\$697,180.00</u>

## Case No. 04A-43

Subject Property Description: SE $\frac{1}{4}$ , Section 24, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$216,405.00</u>
Total	<u>\$216,405.00</u>

## Case No. 04A-44

Subject Property Description: W $\frac{1}{2}$ NE $\frac{1}{4}$ , Section 26, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$106,940.00</u>
Total	<u>\$106,940.00</u>

## Case No. 04A-45

Subject Property Description: NE $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$203,250.00</u>
Total	<u>\$203,250.00</u>

## Case No. 04A-46

Subject Property Description: NW $\frac{1}{4}$  + FCL W $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$320,585.00</u>
Total	<u>\$320,585.00</u>

## Case No. 04A-47

Subject Property Description: E $\frac{1}{2}$ SW $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska

Land	<u>\$118,440.00</u>
Total	<u>\$118,440.00</u>

## Case No. 04A-48

Subject Property Description: SE $\frac{1}{4}$ , Section 27, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$222,460.00</u>
Total	<u>\$222,460.00</u>

## Case No. 04A-49

Subject Property Description: SE $\frac{1}{4}$ , Section 28, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$221,855.00</u>
Total	<u>\$221,855.00</u>

## Case No. 04A-50

Subject Property Description: SE $\frac{1}{4}$ , Section 29, Township 4 North, Range 17 West, 6<sup>th</sup> PM, Harlan County, Nebraska.

Land	<u>\$133,255.00</u>
Total	<u>\$133,255.00</u>

are affirmed.

- That this decision, if no appeal is timely filed, shall be certified to the Harlan County Treasurer, and the Harlan County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).

3. That any request for relief, by any party, which is not specifically provided for by this order is denied.
4. That each party is to bear its own costs in this matter.
5. That this decision shall only be applicable to tax year 2004.
6. This order is effective for purposes of appeal August 10, 2005.

**Signed and Sealed.** August 10, 2005.

\_\_\_\_\_  
Wm. R. Wickersham, Chairperson

\_\_\_\_\_  
Susan S. Lore, Commissioner

\_\_\_\_\_  
Robert L. Hans, Commissioner

**SEAL**

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (REISSUE 2003 AS AMENDED BY 2005 NEB. LAWS L.B. 15 §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**