

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

MELVIN VANDERHEIDEN,)	
)	
Appellant,)	Case Nos 05A-178, 05A-186, 05A-173,
)	05A-177, 05A-170, 05A-172, 05A-157,
v.)	05A-169, 05A-154
)	
CEDAR COUNTY BOARD OF)	DECISION AND ORDER AFFIRMING
EQUALIZATION,)	THE DECISIONS OF THE CEDAR
)	COUNTY BOARD OF EQUALIZATION
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Melvin Vanderheiden to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on November 15, 2006, pursuant to an Order for Hearing and Notice of Hearing issued August 8, 2006. Commissioners Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Melvin Vanderheiden ("the Taxpayer"), appeared through legal counsel, Boyd W. Strobe and Andrew J. Hoffman.

The Cedar County Board of Equalization ("the County Board") appeared through legal counsel, Dennis D. King.

The Case file for each appeal was received without objection of either party.

The Commission received exhibits 1 - 48 by agreement of the parties. Exhibits 49 to 79 were withdrawn by Taxpayer. Exhibits 80 to 134, 136 to 145 were received without objection. Exhibits 135 and 137 were received over the objection of Taxpayer. Exhibits 150, 154 to 157, 162, and 164 were received without objection. Exhibit 156 consisting of 171 pages was admitted at the start of the hearing without objection; however, it was withdrawn by Taxpayer

after it was discovered that the exhibit was for the year 2006 and therefore, not for the year in question, 2005. Exhibits 158 to 161 were withdrawn by Taxpayer. The receipt of exhibit 146 was denied except for the limited purpose of impeachment. Exhibit 147 has 73 separate pages representing 11 attachments to a deposition previously taken, found at Exhibit 146.

Attachments 1 (E147:1) and 4 (E147:24) were received without objection. The receipt of Attachments 2 (E147:2-8), 3(E147:9-24), 6 (E147:55), 7 - 11 (E147:56 - 73) were denied.

Attachment 5 to the deposition, E147:25 - 53, was withdrawn by Taxpayer. The receipt of exhibit 163 was denied except for the limited purpose of impeachment.

The Commission is required by Neb. Rev. Stat. §77-5018 (2006 Cum. Supp.) to state its final decision and order 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 the consolidated cases is as follows.

I. STATEMENT OF ISSUES

The parties, by and through their attorneys, submitted Exhibit 164 which set forth the issues the parties agreed were before the Commission for this hearing. The Commission received the stipulation and approved the contents for the issues which would be heard in this matter. The issues are stated below and are taken verbatim from said exhibit.

The issues for hearing in the above-entitled matter are agreed by the parties and shall be:

1. Whether the market area analysis is a professionally accepted mass appraisal method;
2. Whether the market areas as drawn by the Cedar County Assessor, comply with professionally accepted methodology for establishing value;

3. Whether or not the use of market areas to determine the value of agricultural and horticultural land is prohibited by Nebraska's Constitution or by law;

4. Whether the Taxpayers' property has been assessed uniformly and proportionally by valuing such property at the same percentage of actual value as other similarly situated property in the County;

5. Whether the Taxpayers' property has been valued uniformly when the same or similar soil types within the same County have different values assigned thereto;

The parties further stipulated and agreed that the Taxpayers have raised additional constitutional issues that will not be considered by the Commission and are reserved for either party to be raised on any appeal as follows:

1. Whether Neb.Rev.Stat. §77-103.01 and §77-1363 are unconstitutional as applied to the valuation of Taxpayers' property; and

2. Whether the use and application of Market Areas to value agricultural land is unconstitutional under both Article VIII, §1 of the Nebraska Constitution and the Fourteenth amendment of the United States Constitution.

In summary, the Taxpayer has asserted that taxable value of the subject property as of January 1, 2005, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Was the decision of the County Board determining taxable value of the subject property incorrect and unreasonable or arbitrary?

Was taxable value of the subject property determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska’s Constitution in Article VIII §1?

What was the equalized taxable value of the subject property on January 1, 2005?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as shown in the following table ("the subject property").
2. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Cedar County Assessor, value as proposed in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 05A-178

Description: N1/2NW of Section 35 Township 28 Range 3E Cedar County, Nebraska, Cedar County, Nebraska (80.00 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$115,545.00	\$	\$115,545.00
Improvement	\$	\$	\$
Total	\$115,545.00	\$	\$115,545.00

Case No. 05A-186

Description: PT SE of Section 23 Township 29 Range 3E, Cedar County, Nebraska (156.16 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$237,035.00	\$	\$237,035.00
Improvement	\$	\$	\$
Total	\$237,035.00	\$	\$237,035.00

Case No. 05A-173

Description: NW and N1/2SW of Section 30 Township 28 Range 3E Cedar County, Nebraska (235.45 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$364,600.00	\$	\$364,600.00
Improvement	\$15,880.00	\$	\$15,880.00
Total	\$380,480.00	\$	\$380,480.00

Case No.05A-177

Description: N1/2NE of Section 34 Township 28 Range 3E Cedar County, Nebraska (80.00AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$115,500.00	\$	\$115,500.00
Improvement	\$685.00	\$	\$685.00
Total	\$116,185.00	\$	\$116,185.00

Case No. 05A-170

Description: PT S 1/2 SW of Section 26 Township 28 Range 3E Cedar County, Nebraska (72.20 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$98,255.00	\$	\$98,255.00
Improvement	\$5,400.00	\$	\$5,400.00
Total	\$103,655.00	\$	\$103,655.00

Case No. 05A-172

Description: W 1/2NE of Section 30 Township 28 Range 3E, Cedar County, Nebraska (80.00 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$136,695.00	\$	\$136,695.00
Improvement	\$	\$	\$
Total	\$136,695.00	\$	\$136,695.00

Case No. 05A-157

Description: SE of Section 25 Township 28 Range 3E, Cedar County, Nebraska (160.00 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$234,820.00	\$	\$234,820.00
Improvement	\$36,530.00	\$	\$36,530.00
Total	\$271,350.00	\$	\$271,350.00

Case No. 05A-169

Description: N1/2 SW of Section 26 Township 28 Range 3E, Cedar County, Nebraska (80.00 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$118,115.00	\$	\$118,115.00
Improvement	\$	\$	\$
Total	\$118,115.00	\$	\$118,115.00

Case No. 05A-154

Description: SW of Section 14 Township 28 Range 2E, Cedar County, Nebraska (160.00 AC)

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$239,850.00	\$	\$239,850.00
Improvement	\$215.00	\$	\$215.00
Total	\$240,065.00	\$	\$240,065.00

3. Appeals of the County Board's decisions were filed with the Commission.
4. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
5. The appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on August 8, 2006, set a hearing of the appeals for November 15, 2006, at 9:00 AM CST.
7. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.

8. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary, and the decisions of the County Board should be affirmed
9. Taxable value of each parcel for the tax year 2005 is:

Case No.05A-178

Land value	\$115,545.00
Improvements	\$ <u>0.00</u>
Total value	<u>\$115,545.00.</u>

Case No.05A-186

Land value	\$237,035.00
Improvements	\$ <u>0.00</u>
Total value	<u>\$237,035.00</u>

Case No.05A-173

Land value	\$364,600.00
Improvements	\$ <u>15,880.00</u>
Total value	<u>\$380,480.00</u>

Case No.05A-177

Land value	\$115,500.00
Improvements	\$ <u>685.00</u>
Total value	<u>\$116,185.00</u>

Case No.05A-170

Land value	\$ 98,255.00
Improvements	<u>\$ 5,400.00</u>
Total value	<u>\$103,655.00</u>

Case No.05A-172

Land value	\$136,695.00
Improvements	<u>\$ 0.00</u>
Total value	<u>\$136,695.00</u>

Case No.05A-157

Land value	\$234,820.00
Improvements	<u>\$ 36,530.00</u>
Total value	<u>\$271,350.00</u>

Case No.05A-169

Land value	\$118,115.00
Improvements	<u>\$ 0.00</u>
Total value	<u>\$118,115.00</u>

Case No.05A-154

Land value	\$239,850.00
Improvements	<u>\$ 215.00</u>
Total value	<u>\$240,065.00</u>

III. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. Subject matter jurisdiction of the Commission in this appeal 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).
3. The Commission has jurisdiction over the parties to this appeal.
4. “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).
5. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).
6. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).

7. “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, 829 (2002).
8. 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. Neb. Rev. Stat. §77-131 (Reissue 2003).
9. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
10. Qualified 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).
11. Qualified 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).

12. 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).
13. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
14. “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 Constitution.” *Neb. Const.*, art. VIII, §1
15. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).
16. 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. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

17. 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. *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).
18. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
19. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
20. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
21. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action 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. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
22. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove

that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)

23. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
24. "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).
25. 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).
26. A decision is unreasonable 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).
27. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).
28. Class or subclass of real property means a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not

typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to the classifications of agricultural land or horticultural land listed in section 77-1363, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that effect the actual value in a different manner than it affects the actual value of properties not within the market characteristics class or subclass, Neb. Rev. Stat. 77-103.01 (Reissue 2003).

IV. ANALYSIS

These appeals are part of forty-eight appeals from fourteen taxpayers which were consolidated for purpose of hearing before the Commission. The appeals involve the valuation of agricultural land in Cedar County, Nebraska, for the tax year 2005. The Cedar County Assessor utilized two market areas for Cedar County for 2005. All but one of the properties of the forty-eight taxpayers is in Market Area 2.

A. Argument of Taxpayer

The issues before the Commission were stipulated to by the parties as shown on Exhibit 164. This stipulation was approved and admitted into evidence at the beginning of the hearing. A summary of the position of the Taxpayer is that the County Board did not uniformly or proportionately order the correct taxable value for the Taxpayer's agricultural property for the tax year 2005. The Taxpayer presents an equalization argument only.

A primary allegation made by the Taxpayer is that the Cedar County Assessor used market areas as part of the county's valuation process. For the tax year 2005 the Cedar County Assessor had divided Cedar County into two market areas for assessment purposes. The Taxpayer first alleges that market areas should not have been used at all and secondly, alleges that the market areas were not properly created or maintained in a professionally accepted methodology.

All but one of the forty-eight taxpayers are located in Market Area 2. It is the position of the Taxpayer that valuation of agricultural land in Cedar County can only be made using soil types and that all land of the same soil type should be valued at the same value.

Taxpayer asks that the order of the County Board be reversed and a new value be placed on Taxpayer's property equal to the lowest value for like type property as determined only by soil type.

**B.
Burden of Taxpayer**

**1.
Presumption in Favor of County**

The County Board of Equalization is presumed to have been correct in their order assessing the taxable value of Taxpayer's agricultural property. This presumption may be found in statute. Neb. Rev. Stat. §77-5016 (7) (Reissue 2003).

The 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. *Firethorn Invest. v. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 622 N.W.2d 605 (2001); *Bartlett v. Dawes Cty. Bd. Of Equal.*, 259 Neb. 954, 613 N.W.2d 810 (2000).

Thus, the Taxpayer must first provide evidence that the board's decision is incorrect in order to remove this presumption.

2.

Unreasonable and Arbitrary

Upon a showing of incorrectness of the decision of the County Board, the Taxpayer must next prove by clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary. *Garvey Elevators v Adams County Bd. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

3.

Proof That Agricultural Land of Taxpayers Was Not Uniformly and Proportionately Assessed With Other Similar Type Land in Cedar County

The final burden upon Taxpayer is to show that Taxpayer's land was not uniformly and proportionately assessed with other similar type land in Cedar County. This showing must be made by the "reasonableness" of the evidence presented. The burden of showing such non uniform treatment of taxable valuation rests upon the taxpayer on appeal from the action of the board. *Constructors, Inc. v Cass Cty. Bd. of Equal.* 258 Neb. 866, 606 N.W.2d 786 (2000).

C.

Market Areas

This appeal is one of the first appeals concerning market areas to appear before the Commission following the passing of 2001 Neb. Law, L.B. 170, §3, codified in Neb.Rev. Stat §77-103.01. This new statute legislated the authority to use market areas as a class or subclass for determination of taxable valuation for agricultural land and horticultural land in accordance with Neb. Rev. Stat. §77- 1363 (2001 Supp).

Prior to the passing of 2001 Neb. Laws, L.B. 170, §3, there was no specific statutory authority for or prohibition against the use of market areas for valuation of real property. In past decisions the Commission rested its authority for the use of Market Areas by Nebraska County Assessors on the general allowance of Neb. Rev. Stat. §77-1363 (2001 Supp.) which provides: “Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by County assessors ... to achieve more uniform and proportionate valuations.”

The new law, Neb. Rev. Stat. §77-103.01 (2001 Supp) now provides for the use of market areas as an additional tool for the mass appraisal of agricultural and horticultural lands in accordance with Neb. Rev. Stat. §77-1363 (2001 Supp.).

Prior Nebraska Supreme Court cases have not expressly affirmed the use of market areas due to either the absence of authority for their use or the presence of other required methods for valuing agricultural and horticultural land. An example of one published Appellate opinion rendered prior to the enactment of 2001 Neb. Laws, LB 170, is *Schmidt v Thayer Co. Bd. of Equal.*, 10 Neb. App. 10, 624 N.W.2d 63 (2001). In this opinion the Court stated “The market areas do not constitute subclasses of agricultural land as defined by our statutes.” The Court further held that “subclasses of agricultural land must be based on soil classification, not upon where the land is located.” *Supra*, page 10.

The *Schmidt* case, *Supra*, followed the Supreme Court opinion in the *Bartlett v Dawes Co. Board of Equal.*, 259 Neb 954, 613 N.W.2d 810 (2000) in which the court held that “a ‘market area’ is not a subclass of agricultural land recognized by our statutes.” This ruling involved the Commission’s authority to adjust levels of assessment for a class or subclass during

the statewide equalization process and did not address a county's valuation of individual properties.

The Supreme Court has assumed, without specifically deciding, that market area analysis is a professionally accepted mass appraisal method for establishing actual value in both the 1998 and 2000 valuation cases for Dawes County. *See, Bartlett v Dawes Cty. Bd. Of Equal.*, 259 Neb 954, 613 N.W.2d 810, (2000).

“Market Area” is defined for purposes of property valuation as “the geographic or locational delineation of the market for a specific category of real estate, i.e., the area in which alternative, similar properties effectively compete with the subject property in the minds of probable, potential purchasers and users.” *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, 2002, p.174.

Market Areas have been commonly used to value residential properties. A Market Area is “the area in which properties effectively compete with the subject property in the minds of probable, potential purchasers and users”, *Appraising Residential Properties*, Third Edition, Appraisal Institute, 1999, p. 37. A Market Area is to be distinguished from a neighborhood or district. A neighborhood is an area of complementary land uses while a district is a type of neighborhood characterized by homogeneous land use. *Supra*, p. 37. A Market Area is different in that it can extend beyond the boundaries of a single neighborhood or district to encompass competitive properties in other areas, i.e. diverse land uses.

The concept of Market Areas also applies to agricultural properties. “For rural and agricultural properties, the boundaries generally refer to ‘regional’ and ‘neighborhood’ areas. Regional areas are generally larger than neighborhoods and are characterized by common crop or

livestock uses. A neighborhood area is generally smaller and more closely related to the subject property in land use and community facilities.” *The Appraisal of Rural Property*, Second Edition, 2000, p. 75. “Regional and neighborhood boundaries are typically established by analyzing a combination of land use, crops, and/or livestock; terrain, topography, soils, and/ or range sites; and climatic and/or rainfall patterns.” *Supra*, p. 75.

Market Areas are used in the mass appraisal of properties. *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, p.119. Their value lies in geographic stratification and the development of models used in sales ratio studies and other market analyses.

A most informative treatise on the use of market areas to value property is found in *Appraisal of Real Estate*, 12th Edition, Appraisal Institute, 2001, pp. 163-187. “To identify a market area’s boundaries, an appraiser examines a subject property’s surroundings. The investigation begins with the subject property and proceeds outward, identifying all relevant actual and potential influences on the property’s value that can be attributed to the properties location. The appraiser extends the search far enough to encompass all of the influences the market indicates will affect a property’s value. When no more factors that would impact the value of the subject and surrounding properties are found, the boundaries for analysis are set.” *Supra* at pp. 163 and 164.

To identify the boundaries of the market area, an appraiser:

1. Examines the subject property.
2. Examines the area’s physical characteristics.
3. Draws preliminary boundaries on a map.

4. Determines how well the preliminary boundaries correspond to the demographic data.

Market area analysis focuses on the four forces— social, economic, governmental, and environmental – that influence value. *Supra*, p. 168.

Nebraska County Assessors utilizing the Market Area analysis have been guided by the terms of Neb. Rev. Stat. §77–103.01 as to which characteristics are to be considered in the creation and use of market areas. These factors include parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land.

D.

Evidence Adduced in the Present Case

The Taxpayer's case in chief consisted of those exhibits they offered and were admitted and the testimony of the Cedar County Assessor, Don Hoelsing. There was no other testimony solicited by Taxpayer. The Taxpayer did not testify nor did any of the other Appellants.

The Commission denied the County Board's motion to dismiss after Taxpayer rested.

The County Board provided evidence through its exhibits which were offered and admitted. In addition, County Board called as witnesses to testify: Don Hoelsing, the Cedar County Assessor; Catherine Lang, Nebraska Property Tax Administrator; Jerry Knoche, Appraiser; and Barb Oswald, Liaison for the Property Tax Administrator.

From this evidence, the Commission finds that the County Assessor utilized two market areas for the assessment of agricultural and horticultural land for 2005 in Cedar County. These market areas were described as Market Area 1 and Market Area 2. All but one of the forty-eight

Appellants' properties is in Market Area 2. The market areas for Cedar County are graphically portrayed as shown on Exhibits 60, 162, and 138.

Market Area 2 is located in the south east portion of the county and consists of six townships. Market Area 2 is rectangular in shape and is 18 miles long by 13 miles wide. Township lines were used as the boundaries for market area two on the north and west sides. The east and south boundary lines are the county's boundaries with adjacent counties.

Market Area 1 is the balance of the County beyond the boundaries of Market Area 2.

The Commission finds that the soil types found in Cedar County are shown on Exhibit 60. The boundaries for the market areas are superimposed on Exhibit 60.

Exhibit 150 confirms the valuations placed on land valuation groups (LVG) by market areas. Land valuation groups are derived from soil types. From this exhibit the Commission finds that there are different valuations for the same soil types depending on which market area the land is located.

The Commission notes that the location of a particular soil type within the boundaries of a county has a bearing on the valuation for the soil type. Location can be both a positive or a negative factor. The location can be hampered by woodlands, rivers, man-made structures or it can be enhanced by its location to nearby elevators, more plentiful rainfall or many items that only a buyer can define. Market defines the value placed on property and a certain market will pay more for property within certain locations. The duty of an assessor is to be able to read that market and then assess the property in a uniform and proportionate manner.

In addition, the Taxpayer solicited testimony from the County Assessor that there was irrigated ground (designated as A) in Market Area 1 being valued for less than dryland ground

(designated as D) in Market Area 2. This testimony followed affirmation by the County Assessor that irrigated ground was generally valued higher than dryland ground.

The Taxpayer attempted to solicit testimony from the County Assessor regarding Exhibit 154. Exhibit 154 was a print out of a property sale which was part of a “non-qualified” sales roster. The Taxpayer alleged that this land straddled the northern boundary of Market Area 2. The County Assessor was unfamiliar with the exact composition of this land and no further foundation was attempted to be laid. This exhibit was confusing to the Commission in that it showed two (2) Location Ids, 3579 and 3717. In addition, the exhibit appeared to be for land located in section 6 T29N R1E of 6th PM, but the Parcel Number shows a different section number, section 1, and range number, 1W from the legal description. Most troublesome is the title of the document which states that it is from the “NON - QUALIFIED AG SALE ROSTER - 2005.” The Commission must assume the exhibit reflects information about a non-qualified sale which would not be material to this appeal.

The Taxpayer did not produce any evidence of the actual value of the subject property or characteristics of the subject property other than the information listed on the PRFs offered by County Board.

The County Assessor was recalled to testify by the County Board. He testified that he had been the assessor for Cedar County for approximately 10 years. During that time he had noticed from sales that land was selling for more in certain areas of the county. He testified that using a combination of several factors, only one of which was the sales ratio of sales in the county, he developed boundaries for market areas. In 2003 three market areas were established.

In 2005 the north south line separating Market Area 2 and Market Area 3 was removed and the new market area was designated Market Area 2.

The County Assessor testified that there were several factors which he used to establish the boundary lines for Market Area 2. These factors included an examination of the land for soil types, productivity, availability of water, relation to market distribution points, land use , geography and sales history. Based on this analysis, the boundary lines were established. Township lines on the north and west side of the Market Area 2 were utilized. The county's boundary lines were utilized for the east and south sides.

The County Assessor testified that prior to his use of market areas he had problems being within the acceptable range for the statistical analysis required by Nebraska statute. He created Exhibits 144 and 145 to demonstrate that substituting values from one market area in the other market area resulted in unacceptable statistical results. The acceptable median range for agricultural and horticultural land is 74 to 80 with a coefficient of dispersion (COD) less than 20 and a price related differential (PRD) between 98 - 103. Exhibit 144 demonstrates the results in Market Area 1 if Market Area 2 values were utilized. The median was 89.63 which is out of the acceptable range. Exhibit 145 demonstrates the results in Market Area 2 if values for Market Area 1 were utilized resulting in a median of 61.07 which similarly is out of the acceptable range. Exhibit 139 shows that using market areas resulted in assessment statistics that were within the acceptable range. This evidence demonstrates that the use of Market Areas in valuing agricultural and horticultural land gave a more accurate picture of the market for agricultural land in Cedar County than would have resulted from not using Market Areas.

Barb Oswald testified in her role as Liaison between the Department of Property Tax Administration (DPAT) and Cedar County. As Liaison her duties include consulting with the Cedar County Assessor's office and analyzing the measurements of taxable value for agricultural and horticultural lands. She has been a DPAT Liaison for the past nine years and has worked for the past twenty-seven years in the business of assessing real property. She holds both an assessor's certificate as well as a registered appraiser's license. As Liaison she has 10 counties under her responsibilities all located in the northeast portion of Nebraska. Prior to her testimony she had reviewed the statistics for Cedar County for 2005 and prepared Exhibits 139 to 143. These exhibits validate both the use of the market areas in Cedar County and the uniformity and proportionality of the assessed taxable value of agricultural and horticultural land in Cedar County.

A summary table of both Market Areas 1 and 2 sales over the past three years is shown in Exhibit 139 at page 1. The countywide median of the sales ratios for 2005 is 76.69, COD of 18.60 and PRD of 102.84. The statistics are all within acceptable levels.

Exhibits 140 and 141 demonstrate that the statistics do not fall within the acceptable range when either market area values for agricultural land and horticultural land are substituted for the other. In exhibit 140 the median drops to 67.27 % when Market Area 1 values are used for both market areas. In exhibit 141 the median is 86.41 % when Market Area 2 values are used for both market areas. Both calculated medians are out of the acceptable range.

Exhibits 142 and 143 show the results when each market area uses values for just their area. Exhibit 142 shows that Market Area 1's median is 75.52 % and for exhibit 143, the median

for Market Area 2 is 77.53 %. Thus, the respective market area values work to create acceptable valuations which are uniform and proportionate for each market area and the county overall.

E.
Final Analysis

1.
Evidentiary Burden of Taxpayer

The Commission finds from the above review that the Taxpayer has not met its burden to show that the County Board of equalization was incorrect in their decision. In addition, the Commission finds that the Taxpayer has not shown by clear and convincing evidence that the County Board of equalization was arbitrary or unreasonable in their decision. Further, Taxpayer has failed to provide by reasonable evidence proof that Taxpayer's property was not valued uniformly and proportionately with the other property of similar type within the same market area in Cedar County. The Taxpayer failed to provide any evidence of actual value of the subject property or any other evidence concerning characteristics of the subject property or the comparable properties other than soil type.

2.
Evidentiary Burden by County Board

The Commission finds that the County Board has shown by reasonable evidence that the taxable valuation of agricultural and horticultural lands for 2005 in Cedar County, Nebraska, were valued uniformly and proportionately within each market area.

a.
Use of Market Area Analysis as a Professionally Accepted Mass Appraisal Method

The Commission finds that market area analysis is a professionally accepted Mass appraisal method. Caution must be given that the creation of market areas must be accomplished

using professionally accepted methodology. The Commission finds in this appeal that Cedar County did establish market areas using professionally accepted methodology.

Expert witnesses called by the County Board testified that use of market areas was a professionally accepted methodology for mass appraisal of agricultural and horticultural property. These witnesses included Catherine Lang, Jerry Knoche and Barb Oswald.

b.

Whether or not the use of market areas to determine the value of agricultural and horticultural land is prohibited by Nebraska's constitution or by law.

A material change occurred with the passing of 2001 Neb. Laws, LB 170 §3, enacted as Neb. Rev. Stat. §77-103.01 (2001) which authorizes the use of market areas as a class and or subclass of real property affecting agricultural and horticultural land as defined in Neb Rev Stat. §77-1363.

The Commission is without authority to rule on the constitutionality of the use of market areas and the constitutionality of Neb. Rev. Stat. §77-103.01 and §77-1363 and such issue is reserved by the parties by stipulation to be raised on appeal.

c.

Whether the market areas as drawn by the Cedar County Assessor, comply with professionally accepted methodology for establishing value.

From the review and analysis above the Commission finds that the market areas as drawn by the Cedar County Assessor do comply with professionally accepted methodology for establishing value. Expert witnesses Hoelsing, Knoche and Oswald testified that market areas were drawn in Cedar County with professionally accepted methodology.

d.

Issues 4 and 5 From the Stipulation, Exhibit 164

The Commission finds that the Taxpayer's property has been assessed uniformly and proportionately at the same percentage of actual value as other similar situated property in the county.

Similarly, the Commission finds Taxpayer's property has been valued uniformly despite the fact that the same or similar soil types in the same county have different values assigned thereto. Further, the Commission finds that the Taxpayer has failed to meet its burden in showing that the County Board of Equalization was incorrect or acted in an arbitrary or unreasonable manner.

The appeals of the Taxpayer are denied.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, are affirmed.
2. Taxable value of each parcel of the subject property for the tax year 2005 is:

Case No.05A-178

Land value	\$115,545.00
Improvements	\$ <u>0.00</u>
Total value	<u><u>\$115,545.00.</u></u>

Case No.05A-186

Land value	\$237,035.00
Improvements	<u>\$ 0.00</u>
Total value	<u>\$237,035.00</u>

Case No.05A-173

Land value	\$364,600.00
Improvements	<u>\$ 15,880.00</u>
Total value	<u>\$380,480.00</u>

Case No.05A-177

Land value	\$115,500.00
Improvements	<u>\$ 685.00</u>
Total value	<u>\$116,185.00</u>

Case No.05A-170

Land value	\$ 98,255.00
Improvements	<u>\$ 5,400.00</u>
Total value	<u>\$103,655.00</u>

Case No.05A-172

Land value	\$136,695.00
Improvements	<u>\$ 0.00</u>
Total value	<u>\$136,695.00</u>

Case No.05A-157

Land value	\$234,820.00
Improvements	<u>\$ 36,530.00</u>
Total value	<u>\$271,350.00</u>

Case No.05A-169

Land value	\$118,115.00
Improvements	<u>\$ 0.00</u>
Total value	<u>\$118,115.00</u>

Case No.05A-154

Land value	\$239,850.00
Improvements	<u>\$ 215.00</u>
Total value	<u>\$240,065.00</u>

3. This decision, if no appeal is timely filed, shall be certified to the Cedar County Treasurer, and the Cedar County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2005.

7. This order is effective for purposes of appeal March 14, 2007.

Signed and Sealed. March 14, 2007.

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

William C. Warnes, 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 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.