

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

J. Randel Smith,
Appellant,

v.

Nemaha County Board of Equalization,
Appellee.

Case Nos: 12A 043, 12A 044, & 12A 045

Decision and Order Reversing the
Determinations of the Nemaha County
Board of Equalization

For the Appellant:

Michael R. Dunn,
Halbert, Dunn & Halbert, LLC.

For the Appellee:

Dylan L. Handley,
Counsel for the County Board.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property in these appeals is three parcels of agricultural land with a total of 392.66 acres located in Nemaha County, Nebraska. The legal description and the property record cards for the Subject Property are found at Exhibits 33-35.

II. PROCEDURAL HISTORY

In Case 12A 043, the Nemaha County Assessor (the County Assessor) determined that the assessed value of that portion of the Subject Property was \$199,630 for tax year 2012.¹ J. Randel Smith (the Taxpayer) protested this assessment to the Nemaha County Board of Equalization (the County Board) and requested an assessed valuation of \$164,973.² The County Board determined that the taxable value for that portion of the Subject Property for tax year 2012 was \$199,630.³

In Case 12A 044, the County Assessor determined that the assessed value of that portion of the Subject Property was \$149,605 for tax year 2012.⁴ The Taxpayer protested this assessment

¹ Exhibit 13:1; Exhibit 21:1.

² Exhibit 13:1.

³ Exhibit 13:1.

⁴ Exhibit 14:1.

to the County Board and requested an assessed valuation of \$116,693.⁵ The County Board determined that the taxable value for that portion of the Subject Property for tax year 2012 was \$149,605.⁶

In Case 12A 045, the County Assessor determined that the assessed value of that portion of the Subject Property was \$306,375 for tax year 2012.⁷ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$216,535.⁸ The County Board determined that the taxable value for that portion of the Subject Property for tax year 2012 was \$306,125.⁹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). These appeals were designated for a single commissioner hearing and a single commissioner hearing was held on December 16, 2013. An order by a single commissioner was issued on January 14, 2014.

The Taxpayer filed a timely request for a rehearing on January 25, 2014.¹⁰ The Commission issued an Order for Rehearing and Notice of Rehearing dated August 19, 2014, vacating the January 14, 2014, single commissioner order and setting the appeal for a de novo informal hearing on the merits before the Commission to be held November 4, 2014.¹¹ Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The hearing was held November 4, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.¹² 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

⁵ Exhibit 14:1.

⁶ Exhibit 14:1.

⁷ Exhibit 15:1.

⁸ Exhibit 15:1.

⁹ Exhibit 15:1.

¹⁰ Case File.

¹¹ Case File.

¹² See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”¹³

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.¹⁴

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

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹⁸

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”²⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²¹

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

¹⁴ *Id.*

¹⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

¹⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

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

¹⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

²¹ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

IV. VALUATION

A. Applicable Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.²²

“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.”²³ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”²⁴ 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.²⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁷

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.²⁸

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²⁹

²² Neb. Rev. Stat. §77-112 (Reissue 2009).

²³ Neb. Rev. Stat. §77-112 (Reissue 2009).

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

²⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

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

²⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁸ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁹ Neb. Rev. Stat. §77-132 (Reissue 2009).

B. Findings of Fact

The Taxpayer did not put in dispute the valuation of the Subject Property. The Taxpayer asserted only that the Subject Property was not equalized with other parcels in Nemaha County.

V. EQUALIZATION

A. Applicable Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”³⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³¹ 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.³² In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.³³ 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.³⁴ 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.³⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁶ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere

³⁰ *Neb. Const.*, Art. VIII, §1.

³¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³² *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).

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

³⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁵ *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).

³⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

error of judgment [sic].”³⁷ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁸

B. Findings of Fact

Mark Caspers testified on behalf of the Taxpayer. Caspers held a Nebraska Certified General appraisal certificate since 1992. He also held a Nebraska Real Estate Broker’s License. Caspers testified that in addition to his direct involvement in production agriculture, he had been involved in the auction sales of farmland in Southeast Nebraska and had appraised more than 100 farms in the past five years.

Jana Smith, the Nemaha County Assessor, was also called to testify. Smith testified that she had been the County Assessor since 2011, and that she held the State Assessor Certificate.

Caspers testified that his reason for asserting the Subject Property was not equalized with other parcels of agricultural land and horticultural land was because of an assessment “anomaly” relating to the 1A1A irrigated subclass. The 1A1A subclass of irrigated land is a land capability group (LCG) under Rules & Regulations promulgated by the Nebraska Department of Revenue, Property Assessment Division.³⁹

Caspers testified he discovered the assessment anomaly involving the subclass 1A1A when reviewing the tax year 2012 property record cards associated with a sale that occurred March 11, 2011. Caspers and Smith both testified that the sale, hereinafter referred to as “the Oestmann sale,” was an arm’s length transaction. According to the tax year 2012 property record cards for the parcels involved in the Oestmann sale, the four parcels totaled 141.43 acres.⁴⁰ Of the total acres involved in the Oestmann sale, 47.92 acres were classified in the property record cards as 1A1A acres.⁴¹ The same property record cards indicated a per acre assessment of \$2,320 for all 47.92 acres of the 1A1A land. Smith testified that the assessment of the agricultural land and horticultural land class in Nemaha County for tax year 2012 resulted in a statistically-determined

³⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁸ *Id.* at 673, 94 N.W.2d at 50.

³⁹ Title 350, Chapter 14, Section 004.08E. “A Land Capability Group (LCG) is a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management.” Land Capability Groups are subclasses of real property. Neb. Rev. Stat. §77-1363.

⁴⁰ Exhibit 41:6-17. The first parcel involved in the sale consisted of 46.94 acres. The second parcel consisted of 81.65 acres. The third parcel consisted of 4.34 acres. And the fourth parcel consisted of 8.5 acres.

⁴¹ Exhibit 41:7, Exhibit 41: 10

level of value of 70% of actual value.⁴² A 75% assessment of the actual value of the agricultural land and horticultural land is authorized by Nebraska law.⁴³

Caspers testified that he considered the 1A1A assessment an anomaly because the 1A1A subclass was the most productive subclass of agricultural land and horticultural land in the County, but that it was being assessed after the Oestmann sale at a lower assessment than other subclasses of irrigated land. Smith also testified that the 1A1A subclass was the most productive agricultural land and horticultural land in Nemaha County. Caspers testified that after discovering the anomaly involving the 1A1A land in the Oestmann sale he brought it to the attention of an appraiser contracted with the County Assessor. According to Caspers, this ultimately resulted in the County Board voting to petition the Commission to adjust the value of the subclass. The County Board, in a letter addressed to the Commission dated July 23, 2012, requested Commission action after it “discovered an equalization error” involving the irrigation subclasses 1A1A and 1AA.⁴⁴ In that letter, the County Board also requested a new valuation for both of the identified subclasses of \$3,710, without an explanation of the basis for that quantification. However, soon after sending the July 23 letter, the County Board withdrew its request to the Commission in a letter dated July 31, 2012, without explanation.⁴⁵

The only property record cards received in evidence that include agricultural land and horticultural land consisting of subclass 1A1A acres are the property record cards involving the land associated with the Oestmann sale. None of the Subject Property parcels include any 1A1A acres. Both Caspers and Smith testified to their belief that all 1A1A acres in Nemaha County were assessed at \$2,320 for tax year 2012, and that 1A1A soils were the most productive soils in Nemaha County and had a greater actual value per acre than any other class or subclass of agricultural land and horticultural land.

For the purpose of completeness, the Commission reviewed the Reports and Opinions for Nemaha County (the R&O) for the Statewide Equalization proceedings for 2012.⁴⁶ The R&O

⁴² This is confirmed by Reports and Opinions for Nemaha County for the Statewide Equalization proceedings for 2012 at page 7, which can be found online at http://www.terc.ne.gov/2012/2012_Reports_and_Opinions/R&Os/64Nemaha.pdf.

⁴³ Per Neb. Rev. Stat. §77-201(2), “Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.”

⁴⁴ Exhibit 41:3.

⁴⁵ Exhibit 41:4.

⁴⁶ See, Neb. Rev. Stat. §77-5016(3) (2012 Cum. Supp.), Title 442 Neb. Admin. Code ch 5, §031.02. An electronic copy of this document is available at http://www.terc.ne.gov/2012/2012_Reports_and_Opinions/R&Os/64Nemaha.pdf.

indicates that only 3.16% of the agricultural land and horticultural land in Nemaha County is irrigated acres, consisting of 7,499.41 acres.⁴⁷ The subclasses 1A1 and 1A together total only 952.55 acres in Nemaha County, or 12.7% of this irrigated total.⁴⁸ Since the total number of acres of agricultural land and horticultural land in Nemaha County are 237,162.79, the 952.55 1A1 and 1A acres constituted less than 1/2 of 1% of the total agricultural acres in the County.

Caspers asserted that the anomaly regarding the assessment of the 1A1A subclass amounted to an underassessment of the Oestmann sale properties as well as any other properties in the County that received the assessment of \$2,320 for 1A1A subclass acres. There is nothing in the record before the Commission to indicate that any 1A1A acres in Nemaha County are valued at any amount other than \$2,320 per acre.

The Taxpayer also asserted that the Oestmann sale parcels received favorable assessments because even after their sale on March 11, 2011, the tax year 2012 assessment, as of the effective date of January 1, 2012, was only 37% of the sale price.⁴⁹ As noted above, agricultural land and horticultural land shall be assessed at 75% of its actual value.⁵⁰ Caspers opined that the \$940,000 paid in the Oestmann sale was representative of the market value of the respective agricultural land and horticultural land in Nemaha County for tax year 2012. Smith disagreed. She testified to her opinion that the buyer in the Oestmann sale paid more for the respective parcels than what was typical in the market.

Caspers opined that even if the buyer in the Oestmann sale paid more than what was typical in the market, this was explained by the fact that the land purchased by the buyer contained 1A1A acres, the most productive agricultural land and horticultural land in the county. Caspers testified to his opinion that the 1A1A acres should have been assessed at \$6,000 per acre, or 75% of a market value of \$8,000 per acre. Calculating the values of the 1A1A acres at \$6,000 per acre for the Oestmann sale parcels would result in an increase in the combined assessed value of the Oestmann sale parcels from \$351,195 to \$527,540.⁵¹ However, such a correction would still result in a significant underassessment, assuming the Oestmann sale was representative of the

⁴⁷ The R&O at page 49. The R&O is Exhibit 64 of the Statewide Equalization proceedings for 2012.

⁴⁸ R&O, page 49. 1A1A acres would be a subclass included within the 1A1 or 1A subclass acres.

⁴⁹ The Oestmann sale price involving the four parcels was \$940,000. E41:18. The combined assessments for the four parcels for tax year 2012 were \$351,195 (\$119,630 + \$196,605 + \$10,005 + \$ 24,955). E41:7, E41:10, E41:13, E41:16.

⁵⁰ Neb. Rev. Stat. §77-201(2).

⁵¹ E41:7, E41:10, E41:13, E41:16.

market, since the assessment to sale ratio would be 56%,⁵² substantially below the required 75%.⁵³ To assert both that the \$940,000 sale price was representative of the market, and that the 1A1A acres should have been assessed at \$6,000 per acre, as Caspers opined, are internally inconsistent assertions.⁵⁴

Both Caspers and Smith testified regarding three other sales that included irrigated acres,⁵⁵ but no property record cards were received in evidence for any of these alleged comparable parcels. Without the property record cards, the Commission is unable to make any meaningful comparisons between these parcels and the Subject Property. According to the R&O, and per Smith's testimony, there were 87 qualified sales in the relevant time period, July 1, 2008, to June 30, 2011, for tax year 2012. Of these 87 qualified sales, the property record cards were in evidence in this appeal for only the parcels involved in the Oestmann sale.

Based upon a review of all of the evidence received in these appeals, as well as the R&O, the Commission finds that rather than being a sale that was representative of the agricultural land and horticultural land market in Nemaha County for tax year 2012, the Oestmann sale of March 31, 2011, was largely an outlier, where the sales price for the parcels was significantly higher than the sales prices of similar properties in the county.

While the Oestmann sale is not reliable evidence of the actual value of 1A1A soils for tax year 2012, all of the evidence, including Smith's testimony, confirms that 1A1A soils had the greatest actual value of any other subclass of agricultural land and horticultural land in Nemaha County. The property record cards for the parcels involved in the Oestmann sale are in evidence.⁵⁶ Two of the four parcels involved in the sale contain 1A1A soils.⁵⁷ The property record cards indicate that other subclasses of soils, including 2A1A, were assessed at a higher value than 1A1A soils.⁵⁸ As previously discussed, 1A1A soils were assessed at \$2,320 per acre for tax year 2012.⁵⁹ 2A1A soils were assessed at \$3,710 per acre for tax year 2012.⁶⁰ Because

⁵² $\$527,540 / \$940,000 = 56.12\%$.

⁵³ Neb. Rev. Stat. §77-201(2). The assessment to sales ratio for qualified sales during the relevant time period was 70%. R&O, at page 7.

⁵⁴ In fact, the Oestmann sale was one of ten qualified sales from January 1, 2011 to March 31, 2011 with a median assessment to sale ratio of 61.99%. The Oestmann sale had the lowest ratio of all ten sales, at 37.36%. R&O, page 35.

⁵⁵ These sales are shown at Exhibit 41:19 and identified as "IRRG" under the "Major Use" column.

⁵⁶ See, E41:6-17.

⁵⁷ See, E41:6-11.

⁵⁸ See, E41:6-11.

⁵⁹ See, E41:7.

⁶⁰ See, E41:7.

all of the evidence in the this appeal supports the conclusion that the 1A1A subclass should have been assessed at the highest value for tax year 2012 in Nemaha County, the Commission finds that the assessed value of the 1A1A subclass is at least as much as any other subclass, or \$3,710 per acre. Because the Assessor determined the assessed value of the Oestmann sale properties using a per acre value of \$2,320 instead of a per acre value of \$3,710 (or greater) for the 1A1A subclass, the Commission finds that the Oestmann sale properties containing 1A1A acres were underassessed.

The Oestmann sale parcel with property record number 640111408 was assessed at \$119,630.⁶¹ This parcel should have had an assessment of at least \$144,149.⁶² As a result, it was assessed at 82.99% of what it would have been assessed had the subclass 1A1A acres been assessed at \$3,710.⁶³ This resulted in an assessed value to actual value ratio of 62.24%.⁶⁴

The Oestmann sale parcel with the property record number 640059368 was assessed at \$196,605.⁶⁵ This parcel should have had an assessment of at least \$238,694.⁶⁶ As a result, it was assessed at 82.37% of what it would have been assessed had the subclass 1A1A acres been assessed at \$3,710.⁶⁷ This resulted in an assessed value to actual value ratio of 61.78%.⁶⁸

Therefore, the Commission finds that the assessed values of the Subject Property are grossly excessive when compared with the assessed values of the Oestmann sale parcels. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁶⁹ 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.⁷⁰

Agricultural land and horticultural land is a separate and distinct class of property, and is constitutionally authorized to be valued at a different proportion of actual value for ad valorem

⁶¹ See, E41:7.

⁶² This value is reached as a result of substituting \$3,710 for \$2,230 for 17.64 acres of subclass 1A1A land.

⁶³ \$119,630/\$144,149.

⁶⁴ \$144,149 is 75% of \$192,199. $\$119,630 / \$192,199 = 62.24\%$.

⁶⁵ See, E41:10.

⁶⁶ This value is reached as a result of substituting \$3,710 for \$2,230 for 30.28 acres of subclass 1A1A land.

⁶⁷ \$196,605/\$238,694.

⁶⁸ \$238,694 is 75% of \$318,259. $\$196,605 / \$318,259 = 61.78\%$.

⁶⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁷⁰ See, *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).

tax purposes.⁷¹ The Subject Property may contain both agricultural land and horticultural land and home sites and farm sites with improvements. Improvements, home sites, and farm sites are not agricultural land and horticultural land and cannot be equalized with agricultural land and horticultural land.⁷²

The Commission finds that in order to be equalized with the Oestmann sale parcel with the property record number 640059368 containing agricultural land and horticultural land in Nemaha County, the assessment of the agricultural land and horticultural land contained in the Subject Property should be multiplied by 82.37%.⁷³ Therefore, the equalized value of the Subject Property is as follows:

Case #	Ag Land Assessed Value	Site Assessed Value	Improvement Assessed Value	Total Assessed Value	Equalized Ag Land at 82.37%	Site Assessed Value	Improvement Assessed Value	Total Equalized value
12A 043 ⁷⁴	\$132,545 ⁷⁵	\$6,405 ⁷⁶	\$60,680 ⁷⁷	\$199,630 ⁷⁸	\$109,177 ⁷⁹	\$6,405	\$60,680	\$176,262 ⁸⁰
12A 044 ⁸¹	\$144,365 ⁸²	\$3,340 ⁸³	\$1,900 ⁸⁴	\$149,605 ⁸⁵	\$118,913 ⁸⁶	\$3,340	\$1,900	\$124,153 ⁸⁷
12A 045 ⁸⁸	\$305,085 ⁸⁹	\$1,040 ⁹⁰		\$306,125 ⁹¹	\$251,299 ⁹²	\$1,040		\$252,339 ⁹³

⁷¹ See, *Krings v. Garfield County Board of Equalization*, 286 Neb. 352, 835 N.W.2d 750 (2013).

⁷² See, *Id.*

⁷³ This would equalize the assessment of the Subject Property with the Oestmann sale parcel with the property record number 640059368, which had the lower assessment percentage.

⁷⁴ See, E13 (County Board determination); See also, E33 (Property Record Card).

⁷⁵ \$138,950 - \$6,405. E33:6.

⁷⁶ \$3,780 + \$2,625. E33:6.

⁷⁷ \$36,995 (residence) + \$23,685 (outbuildings), E33:4.

⁷⁸ E33:1.

⁷⁹ \$132,545 * 82.37%.

⁸⁰ \$109,177 + \$6,405 + \$60,680.

⁸¹ See, E14 (County Board determination); See also, E34 (Property Record Card).

⁸² \$147,705 - \$3,340. E34:5-6.

⁸³ E34:5-6.

⁸⁴ E34:2.

⁸⁵ E34:2.

⁸⁶ \$144,365 * 82.37%.

⁸⁷ \$118,913 + \$3,340 + \$1,900.

⁸⁸ See, E15 (County Board determination); See also, E35 (Property Record Card).

⁸⁹ E35:2-3.

⁹⁰ E35:2.

⁹¹ E35:1.

⁹² \$305,085 * 82.37%.

⁹³ \$251,299 + \$1,040.

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 determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable and that the assessed value of the Subject Property when compared with similar properties is grossly excessive.⁹⁴

For all of the reasons set forth above, the decisions of the County Board should be reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Nemaha County Board of Equalization determining the taxable value of the Subject Property for tax year 2012 are vacated and reversed.
2. The taxable values of the Subject Property for tax year 2012 are as follows:

12A 043	\$176,262
12A 044	\$124,153
12A 045	\$252,339

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Nemaha County Treasurer and the Nemaha County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to the Subject Property for tax year 2012.

⁹⁴ Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

7. This Decision and Order is effective for purposes of appeal on December 10, 2014.⁹⁵

Signed and Sealed: December 10, 2014

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁹⁵ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.