

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

Acker Family, LLC,  
Appellant,

v.

Banner County Board of Equalization,  
Appellee.

Case Nos: 11A 058 & 11A 059

Decision and Order Affirming the Banner  
County Board of Equalization

**For the Appellant:**

Dyle Acker,  
Member, Acker Family, LLC.

**For the Appellee:**

James L. Zimmerman,  
Banner County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 208.431 acre parcel in Case Number 11A 058 and a 160.210 acre parcel in Case Number 11A 059, located in Banner County, Nebraska. The legal descriptions of the parcels in Case Number 11A 058 and Case Number 11A 059 are found at Exhibits 1 and 2, respectively. The Property Record Card for the parcel in Case Number 11A 058 is found at Exhibit 3, and the Property Record Card for the parcel in Case Number 11A 059 is found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Banner County Assessor determined that the assessed value of the Subject Property was \$56,519 in Case Number 11A 058 and \$40,556 in Case Number 11A 059 for tax year 2011. Acker Family, LLC (herein referred to as the “Taxpayer”) protested these assessments to the Banner County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$45,880 in Case Number 11A 058 and \$25,900 in Case Number 11A 059 for tax year 2011. The County Board determined that the assessed value for tax year 2011 was \$56,519 in Case Number 11A 058 and \$40,556 in Case Number 11A 059.<sup>1</sup>

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<sup>1</sup> E1 & E2.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of all exchanged exhibits. The Commission held a hearing on July 19, 2012.

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>3</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>4</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>8</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>9</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>10</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>11</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>12</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>13</sup> Taxable value is the

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<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>12</sup> *Id.*

<sup>13</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>14</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>15</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>16</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>17</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>18</sup>

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

- (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.<sup>19</sup>

The Nebraska Department of Revenue’s Property Assessment Division (herein referred to as “PAD”) has issued regulations regarding the assessment of agricultural and horticultural land.<sup>20</sup> Land Capability Groups (herein referred to as “LCGs”), a key component of PAD’s assessment system, are defined as follows under the regulations:

Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands,

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<sup>14</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>15</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>16</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>20</sup> 350 Neb. Admin. Code, ch. 14 (3/2009).

and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification.<sup>21</sup>

PAD's regulations recognize the soil suitability system developed by the Natural Resource Conservation Service (herein sometimes referred to as "NRCS").<sup>22</sup> In this regard, the regulations state as follows: "Land Capability Classification is a system for showing the suitability of soils for most kinds of crops. These are determined by Natural Resources Conservation and Service."<sup>23</sup>

PAD's regulations require county assessors to inventory and categorize each parcel of agricultural land using the following classes: (1) irrigated cropland; (2) dryland cropland; (3) grassland; and (4) wasteland.<sup>24</sup> The county assessor is then required to use a soil conversion legend created by PAD to assign agricultural land to an appropriate LCG.<sup>25</sup>

In addition to the soil conversion legend, the regulations provide LCG definitions and guidelines for use by county assessors for purposes of assessing agricultural and horticultural land.<sup>26</sup> The regulations also permit county assessors to develop additional LCG sub-classifications if needed to achieve uniform and proportionate valuation.<sup>27</sup>

## **B. Summary of the Evidence**

Dyle Acker, a member of Acker Family, LLC, testified at the hearing. Acker asserted that the County Assessor incorrectly determined the assessed value of the Subject Property by adjusting the per acre value of LCGs to conform with desired results in a ratio study, and that the statistical results for this ratio study used as part of the Commission's Statewide Equalization proceedings were based on a different data set that encompassed sales from neighboring

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<sup>21</sup> 350 Neb. Admin. Code, ch. 14, §002.41 (3/2009). The evidence in this hearing often refers to Land Valuation Group ("LVG"). The Commission notes that PAD's current regulations use the term Land Capability Groups (LCG) in place of LVG. Thus, the remainder of this opinion uses the acronym LCG rather than LVG.

<sup>22</sup> See, 350 Neb. Admin. Code, ch. 14, §002.40 (3/2009).

<sup>23</sup> 350 Neb. Admin. Code, ch. 14, §002.40 (3/2009).

<sup>24</sup> 350 Neb. Admin. Code, ch. 14, §004.04 (3/2009).

<sup>25</sup> 350 Neb. Admin. Chapter 14Admin. Code, ch. 14, §004.08B (3/2009) It is the Commission's understanding that the conversion legend referenced in this regulation correlates codes contained on NRCS soil maps with LCG categories.

<sup>26</sup> 350 Neb. Admin. Code, ch. 14, §004.08C-H (3/2009).

<sup>27</sup> 350 Neb. Admin. Code, ch. 14, §004.09 (3/2009).

counties.<sup>28</sup> Acker posited that the sales used in connection with the measurement of the assessed values for 2011 Statewide Equalization purposes should be the same as the sales used to derive the per acre value of the Subject Property.

Acker further asserted that the sales comparison approach used by the County Assessor to value the Subject Property was unreasonable or arbitrary for the following reasons: (1) improper exclusion of sale transactions involving the Subject Property in 2009 and 2010 from the 2011 sales file; (2) improper inclusion of multiple sales of 29.11 acres of agricultural land within the County's three-year look-back window;<sup>29</sup> (3) improper inclusion of sales with large areas of shelterbelt; and (4) improper assignment of value to a wasteland sale.

Acker provided an opinion of value based upon a sales roster that excludes various transactions used by the County Assessor and that includes the following: (1) the 2010 sale of the parcel in Case Number 11A 58 and the 2009 sale of the parcel in Case 11A 59; (2) three 80%-plus dryland sales outside of Banner County used in PAD's 2011 Statewide Equalization ratio study; and (3) Banner County sales roster transactions involving dryland in excess of 75% of the soil type contained in the sales.<sup>30</sup>

Acker cited the *Standard on Ratio Studies* published by the International Association of Assessing Officers ("IAAO") in support of his assertions that: (1) data used to value the Subject Property should be limited to sales with dryland components above 75%; and (2) data used for Subject Property valuation should be the same as the data used for Statewide Equalization statistical measurement purposes.

Sharon Sandberg, the Banner County Assessor, asserted that the sale of the two parcels that comprise the Subject Property was affected by the purchaser's right of first refusal in connection with an estate proceeding. In her opinion, the 2009 and 2010 sales of the parcels that comprise the Subject Property attracted fewer potential buyers as compared to an arm's length transaction, and is, therefore, not a good indicator of the actual value of real property in Banner County.

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<sup>28</sup> See definition of Land Capability Groups ("LCGs") above.

<sup>29</sup> See, E31 (sales file for Banner County agricultural land) and E26.

<sup>30</sup> E25:3 & E28.

Ms. Sandberg further testified that she values the real property in Banner County using a mass appraisal model. She agreed that it was inappropriate to include the two sales of the same 29.11 acre property in her valuation model that occurred within the three-year look-back period.

Ms. Sandberg testified that the valuation process involves trend analysis to determine whether past sales are an appropriate indicator of the value of real property in Banner County, and that when setting the per acre values she begins with the sale with the most acres of a particular subclass of property, and then works her way through other sales. She asserted that she conducts a sales comparison approach and then conducts a performance analysis on each subclass and class of property to ensure compliance with statutorily permissible ranges. If the performance analysis indicates concern, she then makes adjustments to ensure that her valuations meet statutorily required levels of assessment.

### **C. Analysis**

The Taxpayer asserted that the sales used to value the Subject Property must be the same as sales used in connection with the Statewide Equalization ratio study relating to the Subject Property's market area. For purposes of analyzing this assertion, the Commission generally notes that the IAAO's *Standard on Ratio Studies* "provides recommendations on the design, preparation, interpretation, and use of ratio studies for the real property quality assurance operations of an assessor's office."<sup>31</sup> The Commission also notes that the mass appraisal process includes the following distinct components: (1) data management system; (2) valuation system; (3) performance analysis system; (4) administrative/support system; and (5) appeals system.<sup>32</sup>

A mass appraisal valuation system by definition includes the valuation of real property by government officials.<sup>33</sup> In Nebraska, county assessors are permitted to use professionally accepted mass appraisal methods to determine the actual value of real property subject to ad valorem taxes.<sup>34</sup> The IAAO's *Standard on Mass Appraisal of Real Property* is applicable to this portion of the assessment process. The applicable version of IAAO's *Standard on Mass*

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<sup>31</sup> IAAO *Standard on Ratio Studies*, 1 (01/10).

<sup>32</sup> *Mass Appraisal of Real Property*, International Association of Assessing Officers, at 30-34 (1999).

<sup>33</sup> *Id.* at 31-32.

<sup>34</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

*Appraisal of Real Property* states: “This standard defines requirements for the mass appraisal of real property. The primary focus is on mass appraisal for ad valorem tax purposes.”<sup>35</sup>

After an assessor determines the actual value of real property using a professionally accepted mass appraisal method within the valuation system, professionally accepted mass appraisal methods require the assessor to proceed to the use of the performance analysis system referenced above.<sup>36</sup>

Several performance analysis methods exist.<sup>37</sup> Of these methods, however, ratio studies “generally provide the best available measures of appraisal performance and are a valuable tool for evaluating appraisal results, identifying reappraisal priorities, adjusting valuation to the market, and assisting management in planning and scheduling.”<sup>38</sup> Assessments that utilize ratio studies to analyze the performance of the valuation model are required to meet professionally accepted mass appraisal techniques.<sup>39</sup> The IAAO’s *Standard on Ratio Studies* provides guidelines and procedures for appropriately conducting these studies.<sup>40</sup>

In addition to performance analysis conducted by the individual assessor, Nebraska Statutes require the Commission to conduct an annual independent review and performance analysis of the assessment of real property in all Nebraska counties.<sup>41</sup> This performance analysis function, which is generally known as Statewide Equalization, was performed by the State Board of Equalization and Assessment prior to the creation of the Commission.<sup>42</sup> The Nebraska Supreme Court has stated that this function was created to establish uniformity between all the counties within Nebraska.<sup>43</sup>

As a part of the Statewide Equalization process, the Property Assessment Division of the Department of Revenue (“PAD”) conducts ratio studies for all of the market areas defined by the county assessor of each of Nebraska’s 93 counties. The Commission analyzes the performance

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<sup>35</sup> IAAO *Standard on Mass Appraisal of Real Property*, 1 (01/08).

<sup>36</sup> *Mass Appraisal of Real Property*, International Association of Assessing Officers, at 33 (1999).

<sup>37</sup> *Id.* at 31.

<sup>38</sup> *Id.* at 33.

<sup>39</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>40</sup> IAAO *Standard on Ratio Studies*, 1 (01/10).

<sup>41</sup> Neb. Rev. Stat. §77-5022 (Reissue 2009).

<sup>42</sup> *Hanna v. State Board of Equalization and Assessment*, 181 Neb. 725, 150 N.W.2d 878 (1967).

<sup>43</sup> *Id.*



of each valuation model by county and market area for all 93 counties, and determines whether an increase or decrease of the value of a class or subclass of property is warranted in order to ensure that all counties in Nebraska fall within acceptable statistical ranges.<sup>44</sup>

For purposes of addressing the Taxpayer's assertion, it is important to differentiate between sales maintained by the Banner County Assessor as part of the data management system component of her mass appraisal system and PAD's sales file maintained by the Property Tax Administrator ("PTA") as required by Nebraska Statute for Statewide Equalization purposes.

Sufficient data is a necessary component of any county assessor's mass appraisal system, which permits reliable actual value determinations and performance analysis.<sup>45</sup> For purposes of determining the actual value of agricultural and horticultural property, a county assessor may use the sales comparison mass appraisal approach. A county assessor collects data, including lists of recent sales, which are maintained, organized, and stored in the data management system.<sup>46</sup> Sales data may be organized in a manner which can be appropriately identified as a sales list or sales roster.

This county assessor's sales data, however, is not the same as the sales list maintained by the PTA as required by Nebraska Statutes. Nebraska Statutes require the PTA to maintain a sales file.<sup>47</sup> This sales file must be used by the PTA to conduct ratio studies as part of Statewide Equalization.<sup>48</sup> County assessors are required to have access to the sales file.<sup>49</sup>

County assessors, however, are not required to use the sales file data in their mass appraisal system. The county assessor has a distinct role in determining whether a sale is qualified for the purposes of the sales file,<sup>50</sup> but a county assessor is not required to include all data included in the sales file in their mass appraisal system. Therefore, the Commission finds that the sales used to value the Subject Property are not required to be identical with market area ratio study sales so long as both sets of data are representative and reliable.

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<sup>44</sup> Neb. Rev. Stat. §77-5022(1) (Reissue 2009).

<sup>45</sup> *Mass Appraisal of Real Property*, International Association of Assessing Officers, at 32 (1999).

<sup>46</sup> *Id.* at 31.

<sup>47</sup> Neb. Rev. Stat. §77-1327(2) (Reissue 2009).

<sup>48</sup> Neb. Rev. Stat. §77-1327(3)-(4) (Reissue 2009).

<sup>49</sup> Neb. Rev. Stat. §77-1327(1) (Reissue 2009).

<sup>50</sup> Neb. Rev. Stat. §77-1327(2) (Reissue 2009).

The Taxpayer also asserted that the Commission should order inclusion of the 2009/2010 sales of the Subject Property parcels in the sales file because they were arm's-length transactions. As indicated above, the assessing official has the responsibility to maintain their own data used for purposes of establishing the actual value of real property in Nebraska. The Commission is not empowered to force a county assessor to utilize any particular data in this calculation.<sup>51</sup> If evidence is presented to the Commission that a county board's decision was based on an opinion of value which was calculated by a county assessor using unrepresentative or unreliable data, the Commission could increase or decrease the assessed value.<sup>52</sup> The Commission notes that adding the sales of the parcels that comprise the Subject Property to the Banner County Assessor's spreadsheet results in minimal actual value differences that would be removed by rounding.<sup>53</sup>

Similarly, there is no process for an individual taxpayer to appeal a determination by the county assessor or PTA concerning the qualification of a sale.<sup>54</sup> Again, this may be considered by the Commission in a Statewide Equalization proceeding in determining how much weight to assign to the PTA's ratio studies, but the Commission may only order the PTA to include a sale in the sales file if appropriate parties appeal following the appropriate procedures.<sup>55</sup> Decisions concerning Statewide Equalization must be made by May 15 of each year.<sup>56</sup>

The Taxpayer further contended that its calculation of the actual value of the Subject Property was more reliable and representative of the market as compared to the County Board's determination. The Commission notes, however, that while Acker stated that his calculations were more reliable than those relied upon by the County Board, he did not provide statistical measures of reliability.

The Taxpayer further asserted that the County Assessor's model was unreliable because it considered the sales of properties composed of less than 75% dryland. The Taxpayer asserted

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<sup>51</sup> See Neb. Rev. Stat. §77-5007 (Reissue 2009) and Neb. Rev. Stat. §77-5016 (Reissue 2009).

<sup>52</sup> *Id.*

<sup>53</sup> The Commission notes that the assessed value indicated for the Section 4 property would increase \$19.16 and the Section 52 property would decrease by only \$1,590.98.

<sup>54</sup> See, Neb. Rev. Stat. 77-1327(2) (Reissue 2009) (indicating that the county assessor initially determines whether a sale should be qualified and that PTA may overturn the assessor's determination after independent review); See also, 350 Neb. Admin. Chapter 12, §004.

<sup>55</sup> 350 Neb. Admin. Chapter 12, §004.

<sup>56</sup> Neb. Rev. Stat. §77-5028 (Reissue 2009).

that prospective buyers value property lower as dryland percentage decreases. Under this theory, as the percentage of area used for dryland diminishes, the less reliable the sale is in determining the actual value of an acre of dryland. The Taxpayer's submitted calculation did not consider any sales with dryland under 76% of the total area of the sale.<sup>57</sup>

The Taxpayer supported this position by citing PAD directives that indicate that data for ratio studies should be limited to 85% or 95% use categories. Additionally, the Taxpayer borrowed sales from Kimball and Cheyenne County.<sup>58</sup>

The Commission finds that PAD directives concerning ratio studies are not applicable to the valuation system portion of mass appraisal. Moreover, the Banner County Assessor testified that when determining the value of any subclass of real property, she gave the most weight to sales with the greatest number of acres of the applicable class or subclass. She further testified that her valuations were supported by her performance analysis that indicated her valuations were within permissible ranges. Additionally, while the two sales of the same property were used in the County Assessor's sales data, the Commission finds that the amount of acres involved was sufficiently small and that an adjustment to the sales file has little impact.<sup>59</sup>

The Taxpayer asserted that the County Assessor's model gave inappropriate weight to a single sale consisting of 559 dryland acres.<sup>60</sup> The Commission notes, however, that the Taxpayer's calculations also contain a large sale of approximately 636 acres.<sup>61</sup> While a single large sale may have a disproportionate impact on the average sale price per square foot, the County Assessor and Taxpayer both stated that a performance analysis of their final valuations indicated that their valuations were representative and reliable.

The Taxpayer asserted that his performance analysis indicated that he was more reliable than the County Assessor. The burden on the Taxpayer is to show by clear and convincing evidence that the County Board's decision was unreasonable or arbitrary.<sup>62</sup> The County Board's decision

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<sup>57</sup> E28:1.

<sup>58</sup> E25:5.

<sup>59</sup> The parcel in question has is approximately 29 acres. E26. A recalculation of the valuation system absent the first sale of the property does not produce any significant changes.

<sup>60</sup> E26.

<sup>61</sup> E28.

<sup>62</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.<sup>63</sup> “A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion.”<sup>64</sup> The appraisal of real property is not an exact science.<sup>65</sup> It is possible for two individuals to arrive at different yet equally reasonable and reasoned opinions of value. The burden is not met by a mere difference of opinion.<sup>66</sup> The Commission finds that while the Taxpayer’s opinion of value is well-constructed and reasonable, there is not clear and convincing evidence that the County Board’s decision is not as well.

While the Taxpayer asserted that it was inappropriate for the County Assessor to use property with a large area of shelterbelt as a comparable property to the wasteland, the Commission finds that this practice is not unreasonable or arbitrary. Similarly, while the Taxpayer asserted that areas of wasteland associated with agricultural property add no value to the sale, the Commission finds this is not the case. In some instances, wasteland can be converted to workable ground in the future, and wasteland may also provide habitat conducive to recreational enjoyment.

## V. 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 not clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For all of the reasons set forth above, the Taxpayer’s appeals are denied.

## VI. ORDER

IT IS ORDERED THAT:

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<sup>63</sup> See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

<sup>64</sup> *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

<sup>65</sup> *Matter of Bock’s Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

<sup>66</sup> *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

1. The decisions of the Banner County Board of Equalization determining the value of the Subject Property for tax year 2011 are affirmed.<sup>67</sup>
2. The assessed value of the Subject Property for tax year 2011 is: \$56,519 in Case Number 11A 058 and \$40,556 in case Number 11A 059.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Banner County Treasurer and the Banner 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 tax year 2011.
7. This Decision and Order is effective for purposes of appeal on January 13, 2014.

Signed and Sealed: January 13, 2014.

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Thomas D. Freimuth, Commissioner

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Nancy J. Salmon, Commissioner

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

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<sup>67</sup> 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.