

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

William J. Burdess,  
Appellant,

v.

Washington County Board of Equalization,  
Appellee.

Case Nos: 11A 076 & 12A 024  
11A 077 & 12A 025

Decision Reversing County Board

**For the Appellant:**

Aaron Smeall,  
Smith, Gardner & Slusky.

**For the Appellee:**

Edmond E. Talbot III,  
Washington County Attorney.

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

**I. THE SUBJECT PROPERTY**

The Subject Properties include two agricultural parcels located in Washington County, Nebraska. The legal description of the 80-acre Subject Property that is the subject of appeal in Case Nos. 11A 076 and 12A 024 is found at Exhibit 1. The legal description of the 60-acre Subject Property that is the subject of appeal in Case Nos. 11A 077 and 12A 025 is found at Exhibit 3. The property record cards for the Subject Properties for tax years 2011 and 2012, respectively, are found at Exhibits 7 and 15 for the 80-acre parcel and Exhibits 15 and 18 for the 60-acre parcel.

**II. PROCEDURAL HISTORY**

The Washington County Assessor determined that the assessed value of the Subject Property that is the subject of appeal in Case Nos. 11A 076 and 12A 024 was \$286,810 for tax year 2011. William J. Burdess (the Taxpayer) protested these assessments to the Washington County Board of Equalization (the County Board) and requested an assessed valuation of \$239,773 for tax year 2011. The County Board determined that the assessed value for tax year 2011 was \$280,085.<sup>1</sup>

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<sup>1</sup> E1.

The Washington County Assessor determined that the assessed value of the Subject Property that is the subject of appeal in Case Nos. 11A 076 and 12A 024 was \$270,465 for tax year 2012. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$218,080 for tax year 2012. The County Board determined that the assessed value for tax year 2012 was \$270,465.<sup>2</sup>

The Washington County Assessor determined that the assessed value of the Subject Property that is the subject of appeal in Case Nos. 11A 077 and 12A 025 was \$262,625 for tax year 2011. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$214,842 for tax year 2011. The County Board determined that the assessed value for tax year 2011 was \$261,845.<sup>3</sup>

The Washington County Assessor determined that the assessed value of the Subject Property that is the subject of appeal in Case Nos. 11A 077 and 12A 025 was \$275,190 for tax year 2012. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$212,260 for tax year 2012. The County Board determined that the assessed value for tax year 2012 was \$275,190.<sup>4</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on August 20, 2013.

### **III. STANDARD OF REVIEW**

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>5</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>6</sup>

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<sup>2</sup> E2.

<sup>3</sup> E3.

<sup>4</sup> E4.

<sup>5</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>6</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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>7</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>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</sup>

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>10</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>11</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>12</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>13</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

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<sup>7</sup> *Id.*

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

<sup>9</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>10</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>11</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>12</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

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>14</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>15</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>16</sup> 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.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</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>19</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>20</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>21</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

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<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>15</sup> *Id.*

<sup>16</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>17</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>18</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-1359 (1) (Cum. Supp. 2012).

<sup>21</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

(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>22</sup>

A parcel is primarily used for agricultural purposes when it is mainly use for agricultural and horticultural purposes.<sup>23</sup> Nebraska Statutes section 1359(2) defines the term “agricultural and horticultural purposes” as follows: “[U]sed for the commercial production of any plant or animal produce in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.”<sup>24</sup>

Nebraska Statutes require that agricultural and horticultural land be divided into classes and subclasses of real property.<sup>25</sup> “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.”<sup>26</sup>

Wasteland is a subclass of agricultural property.<sup>27</sup> “Wasteland includes land that cannot be used economically and are not suitable for agricultural and horticultural purposes.”<sup>28</sup> Streambeds, banks, and deep gullies are types of wasteland.<sup>29</sup> Land may be wasteland even though improvements to the land, including land shaping, revegetation, or drainage, may lead to the economic use of the property.<sup>30</sup> If a property is restored to a recreational use it is no longer wasteland.<sup>31</sup>

“Timberland and Forestland is land which is wooded by nature or humans and consisting of a dense growth of trees and underbrush such that it is not suitable for grazing.”<sup>32</sup> Timbered land where grazing occurs is considered timbered grass land.<sup>33</sup> Stands of trees, whether natural or planted, where grazing is not practiced or possible is consider Forestland and Shelterbelt Areas.<sup>34</sup>

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<sup>22</sup> Neb. Rev. Stat. §77-1359 (2) (Cum. Supp. 2012) .

<sup>23</sup> 350 Neb. Admin. Code, ch. 14 §002.56 (03/09).

<sup>24</sup> Neb. Rev. Stat. §77-1359 (2) (Cum. Supp. 2012).

<sup>25</sup> See, Neb. Rev. Stat. §77-1353 (Reissue 2009).

<sup>26</sup> Neb. Rev. Stat. §77-103.01 (Reissue 2009).

<sup>27</sup> See, 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>28</sup> 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>29</sup> 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>30</sup> 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>31</sup> 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>32</sup> 350 Neb. Admin. Code, ch. 14 §002.29 (03/09).

<sup>33</sup> 350 Neb. Admin. Code, ch. 14 §004.04G (03/09).

<sup>34</sup> 350 Neb. Admin. Code, ch. 14 §004.04G (03/09).

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

The Taxpayer asserted that the Subject Properties were overvalued and not equalized with similar properties. Specifically, the Taxpayer asserted that land on both of his parcels was reclassified to GRT1 but had previously been classified and valued as wasteland. The Taxpayer asserted that the land is comprised of streambeds, banks, and deep gullies, and that consequently no economic use for the land existed.

The Taxpayer testified that the land on both parcels that was reclassified from wasteland to GRT1 is adjacent to and within the same parcel as land used to produce soybeans. The Taxpayer provided aerial soil maps of the two parcels.<sup>35</sup> The Taxpayer also provided photographs of the portions of the Subject Properties that he asserted should be classified as wasteland.<sup>36</sup>

The Taxpayer testified that his son hunts the Subject Properties occasionally, and that over the course of his ownership he has allowed the harvest of mature walnut trees valued at approximately \$7,500. He further testified that there are currently no trees on the Subject Properties that would be suitable for harvesting purposes.

The Taxpayer asserted that the County Board reclassified GRT1 property to wasteland for tax year 2013 purposes that is comparable to the GRT1 land on the Subject Properties. Thus, he asserted that the principles of equalization and uniformity required that the GRT1 land on the Subject Properties should also be reclassified as wasteland.

The Taxpayer also asserted that the value of the Subject Property was influenced by high deer numbers that ate his crop and therefore reduced the value of the Subject Property.

The Taxpayer further asserted that the \$45,000 (2011) and \$41,000 (2012) first-acre farm homesite values assigned on the Subject Properties are excessive.<sup>37</sup> In support of this assertion, the Taxpayer testified regarding his research in terms of the market value of one-acre parcels in the area of the Subject Properties.

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<sup>35</sup> See, E40:4 & 40:6.

<sup>36</sup> See, E40:7-18.

<sup>37</sup> See, E7:36 & E12:5 (\$45,000 first-acre valuation for tax year 2011 and \$41,000 for tax years 2012 in Case Nos. 11A-076 & 12A-024, respectively); E15:29 & E18:39 (\$45,000 first-acre valuation for tax year 2011 and \$41,000 for tax years 2012 in Case Nos. 11A-077 & 12A-025, respectively).

Ronald Hine, a member of the Washington County Board of Equalization, testified that the areas of GRT1 on the Subject Properties are similar to areas on other properties that were reclassified by the County Board as wasteland. He opined that these areas of the Subject Properties should likewise be classified as wasteland.

### **C. Analysis – GRT1 Classification**

Nebraska Statutes require that properties within a subclass have similar characteristics that are not typically found outside of that subclass.<sup>38</sup> Thus, for purposes of determining the classification of the disputed GRT1 areas of real property, Nebraska law requires classification in only one class or subclass. Additionally, Nebraska law requires classification of real property based on the identification of its common characteristics deemed “typical” of the subclass.

The Nebraska Administrative Code defines wasteland as follows:

Wasteland includes land that cannot be used economically and are not suitable for agricultural and horticultural purposes. Such land types include but are not limited to, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes.<sup>39</sup>

Aerial soil maps for the 80-acre parcel (parcel no. 890022918) and the 60-acre parcel (parcel no. 890023828) indicate that a stream runs through both parcels.<sup>40</sup> The definition of wasteland includes streambeds and banks.<sup>41</sup> No portion of the 80-acre parcel received wasteland designation for tax years 2011 and 2012, even though the aerial map clearly shows that a stream runs through it.<sup>42</sup> Four acres of the 60-acre parcel, in contrast, received wasteland designation for tax years 2011 and 2012, which likely include the streambed and associated banks situated thereon.<sup>43</sup>

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<sup>38</sup> Neb. Rev. Stat. §77-103.01 (2009 Reissue).

<sup>39</sup> 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>40</sup> E40:6 (80-acre parcel no. 890022918); E40:4 (60-acre parcel no. 890023828).

<sup>41</sup> See, 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>42</sup> See, E40:6.

<sup>43</sup> See, E15:25 and E18:22.

The Taxpayer testified that the disputed GRT1 areas of real property had no economic use during tax years 2011 and 2012. While the Taxpayer testified that some of the acres of the Subject Properties are hunted by his son on occasion, he does not lease the land for hunting or hunt it himself. Additionally, the County Assessor and County Board determined that the disputed land should be assigned to a category other than recreational.<sup>44</sup> Thus, the Commission finds that the disputed areas of real property should not be designated as recreational land under Nebraska Real Property Regulations section 001.05E.<sup>45</sup> The Commission further finds that the disputed GRT1 areas of the Subject Properties do not meet the definition of timberland, which is defined as land that cannot be grazed because of overgrowth or trees and brush.<sup>46</sup> In the current case, the topography of the Subject Properties, including deep gullies, streambeds, and banks, renders the disputed GRT1 areas unsuitable for cultivation and grazing.<sup>47</sup> The common typical characteristic that defines these disputed Subject Properties areas is not the trees that are growing on the banks, in the streambeds, or in the deep gullies, but the banks, streambeds, and deep gullies themselves. Thus, rather than meeting the definition of timberland, the disputed GRT1 areas satisfy the definition of wasteland.

The County Board elected not to present a case in support of its valuations of the Subject Properties for tax years 2011 and 2012. The Taxpayer testified that the disputed GRT1 areas of real property had no economic use for agricultural or horticultural purposes during tax years 2011 and 2012, and the evidence also shows that these areas lie adjacent to land used for agricultural purposes as required under the definition of wasteland noted above.<sup>48</sup> The unrefuted testimony and photographic evidence before the Commission, therefore, is that all of the disputed GRT1 real property situated on the Subject Properties is wasteland. Thus, because the disputed GRT1 areas of the Subject Properties do not meet the definitions of recreational land and timberland as noted above, the Commission finds that the Taxpayer has adduced clear and convincing evidence that the County Board's determination to value this property as GRT1 rather than wasteland was arbitrary or unreasonable for tax years 2011 and 2012.

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<sup>44</sup> See, E15:25 and E18:22; See also, E7:20 and E12:26.

<sup>45</sup> 350 Neb. Admin. Code, ch. 10 §001.05E (03/09).

<sup>46</sup> 350 Neb. Admin. Code, ch. 14 §002.29 (03/09).

<sup>47</sup> See, E40:7-14.

<sup>48</sup> See, E40:4 and 40:6; 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

The reclassification of all 25.56 acres of GRT1 land as wasteland results in a total land value of \$136,737 for the 80-acre parcel for tax year 2011 (Case No. 11A-076) and \$148,114 for tax year 2012 (12A-024).<sup>49</sup> The reclassification of all 25.12 acres of GRT1 land as wasteland results in a total land value of \$126,214 for the 60-acre parcel for tax year 2011 (Case No. 11A-077) and \$135,519 for tax year 2012 (12A-025).<sup>50</sup>

#### **D. Analysis – Crop Destruction by Deer**

The Subject Properties were valued using the sales comparison approach for tax years 2011 and 2012.<sup>51</sup> The sales comparison approach uses sales of comparable properties to determine the value of real property.<sup>52</sup>

The Commission finds that the Taxpayer did not produce sufficient evidence to determine whether the sales used for purposes of the County Assessor's mass appraisal model were subject to the same crop loss due to the deer population as compared to the Subject Properties. Thus, the Commission further finds that the Taxpayer did not adduce clear and convincing evidence that the Subject Properties were overvalued due to crop loss caused by the deer population.

#### **E. Analysis – First-Acre Valuation**

The Taxpayer generally asserted that the County's \$45,000 (2011) & \$41,000 (2012 first-acre farm homesite valuations are excessive. In support of this assertion, the Taxpayer testified regarding sales of undeveloped parcels in close proximity to the Subject Properties that indicated the County's first-acre valuations were too high.

The Taxpayer did not provide the property record cards for the alleged comparable properties. The Taxpayer also did not provide any other documents to enable the Commission to determine whether the alleged comparable properties and the Subject Properties are similar, or whether the sales of the alleged comparable properties were actually arm's length transactions. Therefore, because there is insufficient evidence to determine whether the sale properties were

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<sup>49</sup> See, E7:20 (tax year 2011 for the 80-acre parcel: \$73,825 Dry + \$7,500 Farm Site + \$5,300 Grass + \$5,112 Waste [\$200 x 25.56 acres – See, E15:25] + \$45,000 Farm Home = \$136,737); and E12:26 (tax year 2012 for the 80-acre parcel: \$88,600 Dry + \$6,000 Farm Site + \$6,380 Grass + \$6,134 Waste [\$240 x 25.56 acres – See, E18:5] + \$41,000 Farm Home = \$148,114).

<sup>50</sup> See, E15:25 (tax year 2011 for the 60-acre parcel: (\$67,890 Dry + \$5,024 Waste [\$200 x 25.12 acres – See, E15:25] + \$45,000 Farm Home + \$7,500 Site + \$800 Waste = \$126,214); and E18:5 (tax year 2012 for the 60-acre parcel: \$81,530 Dry + \$6,029 Waste [\$240 x 25.12 acres – See, E18:5] + \$41,000 Farm Home + \$6,000 Farm Site + \$960 Waste = \$135,519).

<sup>51</sup> See, E7, E12, E15, and E18.

<sup>52</sup> *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

comparable and the result of an arm's length transactions, the Commission finds that there is not clear and convincing evidence that the County's first-acre farm homesite valuation is unreasonable or arbitrary for tax years 2011 and 2012.

## V. EQUALIZATION

### A. 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."<sup>53</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

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.<sup>57</sup> 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.<sup>58</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>59</sup>

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 error of judgment [sic]."<sup>60</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of

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<sup>53</sup> *Neb. Const.*, Art. VIII, §1.

<sup>54</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>55</sup> *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).

<sup>56</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>57</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>58</sup> *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).

<sup>59</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>60</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

practical uniformity.<sup>61</sup> “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>62</sup>

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

The Taxpayer asserted that the County Board reclassified GRT1 acres of comparable properties to wasteland. The Taxpayer further asserted that this reclassification results in unequal valuation treatment because the property record cards for the Subject Properties indicate that wasteland is valued significantly lower than GRT1.<sup>63</sup> In support of the Taxpayer’s assertions, Ronald Hine, a member of the Washington County Board of Equalization, testified that in his opinion the Subject Properties and the other properties reclassified from GRT1 to wasteland by the County Board were similar.

## **C. Analysis**

Failure to classify similar properties similarly may violate the principles of equalization.<sup>64</sup> The property record cards for the Subject Properties indicate that wasteland is valued significantly lower than GRT1.<sup>65</sup>

The Taxpayer did not provide property record cards for the alleged comparable properties. Without property record cards, the Commission cannot evaluate what areas of the alleged comparable properties were reclassified from GRT1 to wasteland and whether these areas are similar to the disputed GRT1 areas situated on the Subject Properties. The Taxpayer also did not provide photographs to allow a visual analysis of the alleged comparable properties. Therefore, the Commission finds that there is not clear and convincing evidence that the valuation of the Subject Properties for tax years 2011 and 2012 is grossly excessive for equalization analysis purposes.

## **VI. CONCLUSION**

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<sup>61</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>62</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>63</sup> See, E15:25 and E18:22.

<sup>64</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

<sup>65</sup> See, E15:25 and E18:5.

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of the County Board are Vacated and Reversed.

## VII. ORDER

### IT IS ORDERED THAT:

1. The decisions of the Washington County Board of Equalization determining the values of the Subject Properties for tax years 2011 and 2012 are vacated and reversed.<sup>66</sup>
2. The assessed values of the Subject Property that is the subject of appeal in Case Nos. 11A 076 and 12A 024 for tax years 2011 and 2012 are:

<b>11A-076</b>	
Land	\$136,737
<u>Improvement</u>	<u>\$128,875</u>
Total	\$265,612

<b>12A-024</b>	
Land	\$148,114
<u>Improvement</u>	<u>\$104,965</u>
Total	\$253,079

3. The assessed values of the Subject Property that is the subject of appeal in Case Nos. 11A 077 and 12A 025 for tax years 2011 and 2012 are:

<b>11A-077</b>	
Land	\$126,214
<u>Improvement</u>	<u>\$112,390</u>
Total	\$238,604

<b>12A-025</b>	
Land	\$135,519
<u>Improvement</u>	<u>\$111,740</u>
Total	\$247,259

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<sup>66</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.

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Washington County Treasurer and the Washington County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2011 and 2012.
8. This Decision and Order is effective for purposes of appeal on June 25, 2014.

Signed and Sealed: June 25, 2014.

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Thomas D. Freimuth, Commissioner

SEAL

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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.