

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Beef Packers, Inc.,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case Nos: 13A 030, 13A 031, 13A 036 &
13A 037

Decision and Order Affirming the
Determinations of the Sheridan County
Board of Equalization

For the Appellant:

Rudy Stanko,
President and Sharholder of Nebraska Beef Packers, Inc.

For the Appellee:

Dennis D. King,
Sheridan County Attorney.

The appeals were heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of four agricultural and horticultural parcels located in Sheridan County, Nebraska. The parcels associated with case numbers 13A 030 and 13A 036 are improved.¹ The legal description of the Subject Property and property record card for the Subject Property in case number 13A 030 are found at Exhibit 5. The legal description of the Subject Property and property record card for the Subject Property in case number 13A 031 are found at Exhibit 6. The legal description of the Subject Property and property record card for the Subject Property in case number 13A 036 are found at Exhibit 7. The legal description of the Subject Property and property record card for the Subject Property in case number 13A 037 are found at Exhibit 8.

II. PROCEDURAL HISTORY

The Sheridan County Assessor (County Assessor) determined that the assessed value of the Subject Property in case number 13A 030 was \$207,151 for tax year 2013. Nebraska Beef Packers, Inc. (the Taxpayer) protested this assessment to the Sheridan County Board of

¹ See, E5 and E7.

Equalization (the County Board) and requested an assessed valuation of \$86,520. The County Board determined that the assessed value for tax year 2013 was \$176,668.²

The County Assessor determined that the assessed value of the Subject Property in case number 13A 031 was \$4,070 for tax year 2013. The Taxpayer protested this assessment to the County and requested an assessed valuation of \$2,000. The County Board determined that the assessed value for tax year 2013 was \$4,070.³

The County Assessor determined that the assessed value of the Subject Property in case number 13A 036 was \$501,156 for tax year 2013. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$217,500. The County Board determined that the assessed value for tax year 2013 was \$475,875.⁴

The County Assessor determined that the assessed value of the Subject Property in case number 13A 037 was \$265,577 for tax year 2013. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$78,075. The County Board determined that the assessed value for tax year 2013 was \$265,577.⁵

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 as ordered by the Commission. The Commission held a hearing on June 18, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.⁶ 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

² E1.

³ (E1)

⁴ (E1)

⁵ (E1)

⁶ 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.”⁷

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.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ 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.¹²

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.”¹³ 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

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹³ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

knowledge in the evaluation of the evidence presented to it.”¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

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.¹⁶

“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.”¹⁷ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”¹⁸ 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.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

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.²²

¹⁴ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”²³

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.²⁴

Section 77-1311.03 of Nebraska Statutes requires a systematic review and inspection of each parcel of real property at least once each six years.

B. Evidence and Testimony

Rudy Stanko, President and stockholder of Nebraska Beef Packers, testified that his overarching concern was that no one could explain exactly how the County Assessor derived the assessed values for the Subject Property. He asserted that his inquiries were generally met with a two word response, “The market.” Stanko asserted that he received spreadsheets from the County Assessor, but he has never received an adequate explanation of or attempt to explain how the spreadsheets are used to derive an opinion of value.

He further asserted that the County Assessor has asserted that the improvements located on the Subject Properties were valued by cost less depreciation, but the property record cards for the Subject Property with improvements do not indicate any applied depreciation.

Stanko asserted that under accounting principles depreciation should be applied each year according to a depreciation schedule until the improvements have reached their economic life and then only a salvage value, if anything, should remain. He asserted that the value of the improvements on the Subject Property in case number 13A 030, other than the residence, should be valued at \$0 because of accounting depreciation.

²³ Neb. Rev. Stat. §77-132 (Reissue 2009).

²⁴ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

Stanko asserted that the Subject Property in case number 13A 030 was purchased in a transaction in 2001 for \$150,000. He asserted that: (1) \$15,000 of the sale price was attributable to personal property associated with irrigation equipment; (2) \$85,000 was attributable to the land; and (3) \$50,000 was attributable to the residence. He asserted that the value of the land is still \$85,000 and that the depreciated value of all improvements on the Subject Property in case number 13A 030 is \$35,000 as of January 1, 2013. Stanko's total opinion of value for the Subject Property in case number 13A 030 was \$120,000.

Stanko asserted the land component of the other parcels should be value at \$750 an acre for irrigated, \$410 for dry, and grass for \$250.

Stanko did not give an opinion of value for the improvements located on the parcel in case number 13A 036, or any land that is not agricultural or horticultural land.

Trudy Winter, the Sheridan County Assessor, testified that the Taxpayer had requested an explanation of the increase of irrigated land, and that he requested it in a written format which Winter indicated was found in Exhibit 52. She also indicated that she provided the Taxpayer with Exhibit 36, Exhibit 37, and Exhibit 41. Winter explained that she valued irrigated land by examining sales of irrigated land, obtaining the sale price of all such sales, and dividing it by the number of sales to derive a per acre actual value of irrigated land. She then multiplied this value by .72 to determine the per acre assessed value for irrigated land.

Winter asserted that she did not have any sales of 2A1 irrigated subclass but she increased it 30% because sales including all other irrigated subclasses indicated that the value of irrigated property was increasing and had she failed to increase the value of 2A1 irrigated subclass it would have resulted in a lack of equalization. She asserted that she only used qualified sales to value the Subject Property.

Winter attempted to list the values of improvements found in case number 13A 030, but her determinations are unclear. She asserted that she valued the improvements using a cost approach less depreciation. She stated the Subject Property in case number 13A 030 was last reviewed in 1992. Winter asserted that she did not obtain depreciation for improvements every year, but that she made percentage adjustments each year to account for applicable depreciation.

Amanda Salisbury, Deputy Assessor with Sheridan County Assessor's Office, testified that she does not know how the County Assessor derived the assessed values for 2013. She stated that at times files are misplaced and that at times there is a "mess" in the County Assessor's Office. She asserted it will take several years to update the information in the County Assessor's Office, but the process had already begun. She also asserted that many of the County Assessor's Office's problems stem, at least in part, from a lack of resources.

Dan Kling, a member of the Sheridan County Board of Equalization in 2013, indicated that the 25% increase on irrigated property was done by the County Assessor using sales. He indicated that he was unaware of the exact valuation process because he is not an appraiser or an assessor, but he was aware that the process involves examining sales. He indicated that he had never seen a spreadsheet of comparable sales with calculations indicating how market values were derived. He testified that he has looked at sales and has reviewed the sales roster but that he relied upon the County Assessor's recommendations because he does not have the specialized knowledge of an appraiser. He asserted that he does not just rubber stamp the County Assessor opinion, but looks at the specific recommendations on the appeals and makes a determination. He asserted that the County Board's mission is to ensure that properties are valued similarly.

Jack Andersen, a member of the Sheridan County Board of Equalization, testified that he has a vague understanding of the valuation process, but that he does not have a complete understanding of it. He asserted that his job is to make sure that all properties before him are valued uniformly. He indicated that he had not seen a written indication of how the values for agricultural and horticultural land were derived.

Jim Krotz, a member of the Sheridan County Board of Equalization, testified that his duties were to review protests from taxpayers to make sure that properties were reasonably and equitably assessed. He testified that he relied on the County Assessor's opinion and that he did not check her work. He asserted that he believed that the County Assessor's values were equitable but that he did not know the process the County Assessor followed.

C. Issues

The Taxpayer's assertions can be summarized as two separate claims: (1) the assessed values of agricultural and horticultural land found on all parcels consolidated in this order were unexplained, unexplainable, and incorrect; and (2) the assessed values of improvements located on the parcel in appeals 13A 030 and 13A 036 do not accurately reflect the appropriate amount of depreciation.

1. Agricultural and Horticultural Land Values

The Taxpayer generally asserted that all agricultural and horticultural land assessed values had been derived based upon an unexplained and unexplainable method. He asserted that the actual value of an irrigated acre was \$750, the actual value of a dry acre was \$410, and the actual value of a grass acre was \$250. All properties consolidated in this order contain agricultural and horticultural land.²⁵

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.²⁶

A mass appraisal valuation system by definition includes the valuation of real property by government officials.²⁷ 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.²⁸ 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 a performance analysis system.²⁹

²⁵ See, E1, E2, E3, and E4.

²⁶ *Mass Appraisal of Real Property*, International Association of Assessing Officers, at 30-34 (1999).

²⁷ *Id.* at 31-32.

²⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁹ *Mass Appraisal of Real Property*, International Association of Assessing Officers, at 33 (1999).

Several performance analysis methods exist.³⁰ Of these methods 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.”³¹

In addition to performance analysis conducted by the individual assessor, Nebraska Statutes require the Commission to conduct an annual independent review of performance analyses of the assessment of real property in all Nebraska counties.³² The Nebraska Supreme Court has stated that this function was created to establish uniformity between all the counties within Nebraska.³³

The Commission analyzes the performance 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.³⁴ For purposes of measuring the level of value of agricultural and horticultural land and its subclasses (i.e., irrigated, dry, and grass), Nebraska Statutes require that the median assessed value fall between 75% and 69% as indicated by a ratio study.³⁵

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.³⁶ Sales data may be organized in a manner which can be appropriately identified as a sales list or sales roster.

The record indicates the County Assessor used a sales comparison mass appraisal approach to determine the actual value of agricultural and horticultural land in Sheridan County. Winter examined qualified sales of real property which included agricultural and horticultural land. These sales are found in her sales roster.³⁷ The sales roster stratifies the area of each agricultural or horticultural parcel by the subclasses of agricultural or horticultural property present on the

³⁰ *Id.* at 31.

³¹ *Id.* at 33.

³² Neb. Rev. Stat. §77-5022 (Reissue 2009).

³³ *Id.*

³⁴ Neb. Rev. Stat. §77-5022(1) (Reissue 2009).

³⁵ Neb. Rev. Stat. §77-5023(2) (Reissue 2009).

³⁶ *Id.* at 31.

³⁷ See, E41.

parcel.³⁸ For example, the sales roster indicates that the real property which sold as part of a transaction recorded in county number 81 (Sheridan County), book 2010, page 70, contained the following subclasses of agricultural or horticultural property: 24.76 acres of 1A; 22.17 acres of 2A; 50.5 acres of 3A; 20.57 acres of 4A1; 30.14 acres of 1D; 6.25 acres of 2D; and 5.61 acres of 3D.³⁹

To determine the value of a subclass in which current sales were available, Winter examined sales that contained some area of the corresponding subclass of agricultural or horticultural property. In other words, to determine the value of 1A property in Sheridan County, Winter examined the per acre sale price of qualified transactions occurring within the permitted three year look back period where the real property transferred included the 1A subclass.⁴⁰ Winter then derived the per acre value of the real property as indicated by the sale by dividing the total sale price by the number of acres sold.⁴¹

Generally, when determining the current per acre value of a subclass or agricultural or horticultural land the county assessor will not base a determination solely on the median of the per acre value of sales. Instead the county assessor takes into account the predominant subclass of agricultural and horticultural land included in the sale (i.e., did the real property associated with the transfer contain more 1A or some other subclass of agricultural or horticultural land). There is some subjectivity afforded the county assessor when determining which sale or sales to give the most weight.

Winter indicated that when sales of a subclass were not available she examined the most similar subclasses to make reasonable determinations of the value of the subclass.

Because a county assessor must make judgment calls concerning the amount of weight to give particular sales there may not be a written mathematical equation that can completely illustrate the process. It is possible for reasonable minds to disagree concerning the per acre value of a subclass of agricultural or horticultural land. The appraisal of real estate is not an

³⁸ See, *Id.*

³⁹ *Id.*

⁴⁰ See, E36.

⁴¹ See, E36.

exact science.⁴² The Nebraska Supreme Court has concluded that mathematical precision in assessment valuations and equalization is impossible.⁴³ The burden on the Taxpayer is to show that the County Board's determinations were unreasonable or arbitrary.⁴⁴ A "mere difference of opinion" is not sufficient to meet this burden unless the Subject Property is not equalized with other properties.⁴⁵

A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.⁴⁶ "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."⁴⁷

Following Winter's valuation, she analyzed her conclusions through a ratio study as part of a performance analysis and the results of that ratio study are contained in evidence.⁴⁸ The ratio study indicates that her median values for agricultural and horticultural land fall within the required levels.⁴⁹

The Commission also notes that the sale price of the most recent qualified sales of agricultural and horticultural land as indicated in the sales roster are greater than older sales.⁵⁰ The assessed values per acre as assigned by Winter to agricultural and horticultural subclasses are also similar to the assessed values per acre in similar counties.⁵¹

The Commission finds that the Taxpayer has not produced clear and convincing evidence that the County Board's determinations which relied upon the County Assessor's assessed values for agricultural and horticultural land were unreasonable or arbitrary. The Commission finds that the Taxpayer's opinion of the value of agricultural and horticultural land amounts to a

⁴² *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

⁴³ *LeDioyt v. County of Keith*, 161 Neb. 615, 622, 74 N.W.2d 455, 461 (1956).

⁴⁴ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Bd. Of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (citations omitted).

⁴⁵ *Id.*

⁴⁶ See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

⁴⁷ *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

⁴⁸ See, E41.

⁴⁹ *Id.*

⁵⁰ See, E41, E36, and E37.

⁵¹ See, E38.

mere difference of opinion, and it is not sufficient to overcome the presumption in favor of the County Board's determinations or the burden imposed on the Taxpayer.

2. 13A-030 and 13A-036 Improvement Values

Of the four parcels consolidated for appeal, only the parcels associated with appeals 13A 030 and 13A 036 contain improvements. At the hearing Stanko focused on the County Assessor's method for valuing the improvements located on the parcel in appeal 13A 030. Stanko asserted that according to accounting standards the value attributable to all of the improvements except the house should be \$0 due to depreciation. Stanko asserted that the house on the parcel associated with 13A 030 had depreciated from its purchase value in 2001 to \$35,000 as of January 1, 2013. Stanko described his method as "cost less depreciation."

The County Assessor asserted that she valued the improvements in 13A 030 and 13A 036 using the cost approach and adjusting the value each year based on the market. She asserted that the improvements associated with the Subject Property in 13A 030 had not been reviewed since 1992, but that increases and decreases had been made based on the market and in an attempt to value all parcels similarly.

The property record cards on the parcels associated with case numbers 13A 030 and 13A 036 indicate that the house in case number 13A 030 and improvements in case number 13A 036 were valued using a cost approach conducted in 1988.⁵² From 1988 until 2013, these property record cards indicate percentage adjustments made to all improvements within the subclass of rural residential properties based upon ratio studies or orders from the Commission following Statewide Equalization proceedings.⁵³ Additionally, the property record card for case number 13A 030 indicates that the County Assessor used a similar procedure to determine the assessed value of all other improvements located on the parcel in case number 13A 030 except for a 40x20x8 structure described as a pole barn and a 33x24x9 structure described as a hay shed.⁵⁴ The County Assessor valued the 40x20x8 structure described as a pole barn and a 33x24x9

⁵² See, E5:4-5 (Case No. 13A-030); See also, E7:3-4 (Case No. 13A 036).

⁵³ *Id.*

⁵⁴ See, E5:9-10.

structure described as a hay shed using a 2013 cost model and then increasing the derived value by 8%.⁵⁵

Neither the Taxpayer's method of calculating the actual value of the improvements, nor the County Assessor's method of calculating the actual value of improvements, represent an acceptable method for determining the actual value of real property under Nebraska Statute or in accordance with any known real property appraisal standard or method.

The cost approach as used in the assessment of real property includes six steps: "(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach."⁵⁶

The Commission finds that except for the 40x20x8 structure described as a pole barn and a 33x24x9 structure described as a hay shed found in case number 13A 030, the County Assessor and her predecessor have not followed any of the cost approach steps for determining the actual value of the improvements found in the consolidated appeals since sometime between 1988 and 1992. Nebraska Statutes require that the County Assessor reviews each property at least every six years.⁵⁷

The various members of the County Board who testified at the hearing generally asserted that the County Board's responsibility was to ensure that real property was valued uniformly throughout the county. While it is clear that County Board is required to ensure that real

⁵⁵ See, E5:9-10.

⁵⁶ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

⁵⁷ Neb. Rev. Stat. §77-1311.03 (2012 Cum. Supp.).

property is value uniformly throughout Sheridan County,⁵⁸ it is equally clear that the County Board has the duty to make determinations concerning protests from the County Assessor's assessed values.⁵⁹ It is understandable and reasonable that County Board members who operate part-time as members of a county administrative agency will not generally possess extensive knowledge of assessment procedures. Nevertheless, when a County Board's determination relies upon the opinion of a County Assessor which overvalues the taxed property, and such a result is shown by clear and convincing evidence upon appeal, the County Board's determination is unreasonable or arbitrary.

The Commission finds that the County Board's determination to adopt the County Assessor's improvement values where the County Assessor and her predecessor failed to review the Subject Property for a quarter of a century is completely unreasonable or arbitrary.

The Commission also finds that the Taxpayer's opinion of value is also not supported by Nebraska Statutes or commonly accepted appraisal principles, and therefore gives it no weight.

Unlike accounting or other standards, the cost approach for appraising real property looks at the cost to replace the real property in today's market.⁶⁰ After the replacement cost for the real property is derived, adjustments to the replacement cost are made based upon: (1) physical depreciation such as deferred maintenance and wear and tear of the property and accounting for any renovations made; (2) functional depreciation based upon the utility of the real property in current market; (3) and external depreciation based upon the market areas economy and other factors outside of the real property.⁶¹ For these reasons the Taxpayer's asserted value is also not reasonable.

The Commission notes that the County Assessor generated new values for improvements other than the house in case number 13A 030 as of 2013 using a costing system. The Commission notes that other than the value of 40x20x8 structure described as a pole barn and a 33x24x9 structure described as a hay shed found in case number 13A 030, the 2013 costing

⁵⁸ See, Neb. Rev. Stat. §77-1501 (2013 Supp.).

⁵⁹ See, Neb. Rev. Stat. §77-1502 (Reissue 2009).

⁶⁰ International Association of Assessing Officers, *Property Assessment Valuation*, at 237 (3rd ed. 2010).

⁶¹ International Association of Assessing Officers, *Property Assessment Valuation*, at 257-302 (3rd ed. 2010).

system values exceeded the County Assessor's 2013 improvement values.⁶² The Commission finds that if it were to adopt the 2013 costing values that the taxable value of the Subject Property would be grossly excessive when compared to other similar properties.

The Commission finds that while the County Board's determinations of the value of improvements are unreasonable or arbitrary, no other opinion of value offered in the case is any more reasonable and values the improvements uniformly. The Commission finds that the value of the improvement should stay the same.

V. CONCLUSION

The Commission finds that there is sufficient competent evidence to rebut the presumptions that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations in case numbers 13A 030 and 13A 036. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable in case numbers 13A 030 and 13A 036.

The Commission finds that there is not sufficient competent evidence to rebut the presumptions that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations in case numbers 13A 031 and 13A 037. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable in case numbers 13A 031 and 13A 037.

For all of the reasons set forth above, the determinations of the County Board are affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sheridan County Board of Equalization determining the taxable value of the Subject Property in case numbers 13A 030, 13A 031, 13A 036, and 13A 037 for tax year 2013 are affirmed.
2. The taxable value of the Subject Property in case number 13A 030 for tax year 2013 is \$176,668.

⁶² See, E5:9-10.

3. The taxable value of the Subject Property in case number 13A 031 for tax year 2013 is \$4,070.
4. The taxable value of the Subject Property in case number 13A 036 for tax year 2013 is \$475,875.
5. The taxable value of the Subject Property in case number 13A 037 for tax year 2013 is \$265,577.
6. This Decision and Order, if no appeal is timely filed, shall be certified to the Sheridan County Treasurer and the Sheridan County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax year 2013.
10. This Decision and Order is effective for purposes of appeal on October 3, 2014.

Signed and Sealed: October 3, 2014

Thomas D. Freimuth, Commissioner

SEAL

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.