

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John J. Huse,

and

Huse Revocable Trust, John J. Huse, Co-Trustee,

Appellants,

v.

Dakota County Board of Equalization,
Appellee.

Case Nos: 12A 077, 12A 078, 12A 079,
14A 057, 14A 058, and 14A 056

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

For the Appellant:

John J. Huse, Co-Trustee of Huse Revocable
Trust, Pro Se.

For the Appellee:

Tyler Tigges,
Deputy Dakota County Attorney.

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

I. THE SUBJECT PROPERTY

The Subject Property includes three unimproved agricultural parcels located in Dakota County, Nebraska. The Property Record Files (“PRFs”) for the Subject Property parcels for tax years 2012 and 2014 are found at Exhibits 9 through 14. These PRFs include the legal description for each Subject Property parcel.

II. PROCEDURAL HISTORY

The Dakota County Assessor (herein referred to as the “County Assessor”) determined that the assessed value of the 61.62-acre Subject Property parcel in Case Nos. 12A-077 and 14A-057 was \$196,115 and \$320,735 for tax years 2012 and 2014, respectively.¹ The Huse Revocable Trust, John J. Huse, Co-Trustee (John J. Huse and Huse Revocable Trust are referred to herein as the “Taxpayer”), protested the 2012 assessment to the Dakota County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$151,125 for tax year 2012.² The Taxpayer protested the 2014 assessment to the County Board and requested

¹ E1 and E2.

² E9:3.

an assessed valuation of \$148,812 for tax year 2014.³ The County Board determined that the taxable value was \$196,115 for tax year 2012 and \$320,735 for tax year 2014.⁴

The County Assessor determined that the assessed value of the 48.75-acre Subject Property parcel in Case Nos. 12A-078 and 14A-058 was \$164,140 and \$269,460 for tax years 2012 and 2014, respectively.⁵ The Taxpayer protested the 2012 assessment to the County Board requesting an assessed valuation of \$126,750 for tax year 2012, and the Taxpayer also protested the 2014 assessment to the County Board requesting an assessed valuation of \$117,731 for tax year 2014.⁶ The County Board determined that the taxable value was \$164,140 for tax year 2012 and \$269,460 for tax year 2014.⁷

The County Assessor determined that the assessed value of the 36.32-acre Subject Property parcel in Case Nos. 12A-079 and 14A-056 was \$122,290 and \$202,500 for tax years 2012 and 2014, respectively.⁸ The Taxpayer protested the 2012 assessment to the County Board requesting an assessed valuation of \$94,430 for tax year 2012, and the Taxpayer also protested the 2014 assessment to the County Board requesting an assessed valuation of \$87,713 for tax year 2014.⁹ The County Board determined that the taxable value was \$122,290 for tax year 2012 and \$202,500 for tax year 2014.¹⁰

The Taxpayer appealed the decisions 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. The Commission held a hearing on February 27, 2015.

A majority of the Commission constitutes a quorum sufficient to transact business.¹¹ The Commission must deny relief “in any hearing or proceeding unless a majority of the Commissioners present determine that the relief should be granted.”¹² A majority is defined as, “The greater number. The number greater than half of any total.”¹³ Commissioner Freimuth and Commissioner Salmon were present at the hearing and constituted a majority of the Commission,

³ E10:2.

⁴ E1 and E2.

⁵ E3 and E4.

⁶ E11:3 and E12:2.

⁷ E3 and E4.

⁸ E5 and E6.

⁹ E13:2 and E14:2.

¹⁰ E5 and E6.

¹¹ See, Neb. Rev. Stat. §77-5005(2) (2014 Cum. Supp.).

¹² See, Neb. Rev. Stat. §77-5016(13) (2014 Cum. Supp.).

¹³ *Black's Law Dictionary 6th Edition*, West Group, p. 955 (1990).

and, therefore, a quorum sufficient to transact business. A majority of the Commission has determined that relief should not be granted. The determination of the County Board is affirmed.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.¹⁴ 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."¹⁵

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.¹⁶

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.¹⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁸

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁹ 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.²⁰

¹⁴ See, Neb. Rev. Stat. §77-5016(8) (2014 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).

¹⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁶ *Id.*

¹⁷ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁹ 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).

²⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.”²¹ 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.”²² The Commission’s Decision and Order shall include findings of fact and conclusions of law.²³

IV. VALUATION

A. General Valuation Law for Agricultural & Horticultural Land

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.²⁴

“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.”²⁵ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”²⁶ 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.²⁷ All real property in Nebraska subject to taxation

²¹ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

²² Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

²³ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

²⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

shall be assessed as of January 1.²⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁹

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.³⁰

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”³¹

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.³²

Nebraska Statutes section 77-1363 prescribes the basis for the assessment of agricultural and horticultural land:

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and

²⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

²⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³⁰ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

³¹ Neb. Rev. Stat. §77-132 (Reissue 2009).

³² Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.³³

Nebraska Statutes section 77-103.01, which is referenced in Nebraska Statutes section 77-1363 cited above, defines the term “class or subclass” as follows:

Class or subclass of real property means a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass.³⁴

The government official known as the “Property Tax Administrator” referenced above in Nebraska Statutes section 77-1363 is the chief administrative officer of the Nebraska Department of Revenue’s Property Assessment Division (herein sometimes referred to as “PAD”).³⁵ PAD has issued regulations regarding the classification of agricultural and horticultural land for assessment purposes that supplement the above-noted Nebraska Statutes sections 77-1363 and 77-103.01.³⁶

Consistent with Nebraska Statutes section 77-1363, PAD’s regulations require county assessors to inventory and categorize each acre of each parcel of agricultural and horticultural land based on “use” and “soil type.”³⁷ The county assessor is then required to use a “soil conversion legend” created by PAD to assign each acre of agricultural and horticultural land to a Land Capability Group (herein referred to as “LCG”).³⁸

PAD’s regulations provide for the following land “use” classes, which are used by county assessors to inventory acres of agricultural and horticultural land: (1) irrigated cropland; (2)

³³ See, Neb. Rev. Stat. §77-1363 (Cum. Supp. 2014).

³⁴ Neb. Rev. Stat. §77-103.01 (Reissue 2009).

³⁵ Neb. Rev. Stat. §77-701(1) (Cum. Supp. 2014).

³⁶ 350 Neb. Admin. Code, ch. 14 (3/09).

³⁷ See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), 350 Neb. Admin. Code, ch. 14, §§004.04, 004.06, 004.06B, 004.06D, 004.07D, 004.08A – 004.08H (3/09).

³⁸ See, 350 Neb. Admin. Code, ch. 14, §§004.06C, 004.07E, 004.07E, 004.08A – B, 004.08E (3/09). It is the Commission’s understanding that the “soil conversion legend” referenced in PAD’s regulations correlates LCG categories with four-digit soil-type codes determined by the U.S. Department of Agriculture’s Natural Resource Conservation Service (herein sometimes referred to as “NRCS”).

dryland cropland; (3) grassland; (4) wasteland; (5) government programs land (Conservation Reserve Program, Conservation Reserve Enhancement Program, Environmental Quality Incentives Program, Stewardship Incentive Program, Tree Assistance Program, Water Bank Program); (6) intensive use areas; and (7) forestland and shelterbelt areas.³⁹

As indicated previously, in addition to land use categorization, county assessors are required to inventory each acre of agricultural land based on soil type. Consistent with Nebraska Statutes section 77-1363, PAD’s regulations recognize the soil classification system developed by the Natural Resource Conservation Service (herein sometimes referred to as “NRCS”) for this purpose.⁴⁰

After categorizing each acre of each parcel of agricultural and horticultural land based on land use and NRCS soil type, the county assessor is then required to use a “soil conversion legend” created by PAD to assign each acre of agricultural and horticultural land to a Land Capability Group (herein referred to as “LCG”).⁴¹ LCGs are defined as follows under PAD’s regulations:

[G]roups 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, 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.⁴²

PAD’s regulations recognize the soil suitability system developed by the NRCS for purposes of assigning agricultural and horticultural land to an appropriate LCG.⁴³ In this regard, the regulations state as follows: “Land Capability Classification is a system for showing the

³⁹ 350 Neb. Admin. Code, ch. 14, §004.04A – 004.04G (3/09).

⁴⁰ See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), 350 Neb. Admin. Code, ch. 14, §§002.40, 004.08E (3/09). See also, 442 Neb. Admin. Code, ch. 5, §031.02 (6/11) (the Commission is allowed to take judicial notice of soil surveys for Nebraska’s 93 counties published by the NRCS, which is a subdivision of the United States Department of Agriculture).

⁴¹ See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), 350 Neb. Admin. Code, ch. 14, §§004.06C, 004.07E, 004.07E, 004.08A – B, 004.08E (3/09). PAD’s regulations indicate the “soil conversion legend” correlates LCG categories with four-digit soil-type codes determined by the U.S. Department of Agriculture’s Natural Resource Conservation Service (herein sometimes referred to as “NRCS”). Prior to the repeal of Nebraska Statutes sections 77-1361 and 77-1362 in 2006, the Property Tax Administrator (“PTA”) published this “soil conversion legend” in an agricultural land valuation manual prescribed by statute. Because the repeal of Nebraska Statutes sections 77-1361 and 77-1362 in 2006 removed the requirement to publish an agricultural land valuation manual, the PTA no longer publishes PAD’s “soil conversion legend” provided to county assessors to correlate NRCS four-digit soil types with LCGs based on land use.

⁴² 350 Neb. Admin. Code, ch. 14, §002.41 (3/09).

⁴³ See, 350 Neb. Admin. Code, ch. 14, §002.40 (3/09); See also, 442 Neb. Admin. Code, ch. 5, §031.02 (6/11) (the Commission is allowed to take judicial notice of soil surveys for Nebraska’s 93 counties published by the NRCS, which is a subdivision of the United States Department of Agriculture).

suitability of soils for most kinds of crops. These are determined by Natural Resources Conservation and Service."⁴⁴

PAD's regulations further state as follows regarding the use of the soil suitability system developed by the NRCS for purposes of assigning agricultural land to an appropriate LCG:

A Land Capability Group (LCG) is a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management. Since the soil conservation service maps major natural bodies of soil in a mapping area, the criteria used for grouping the soils do not include major land reformation that would change slope, depth or other characteristics of the soils, nor do they include unlikely major reclamation projects. When such areas have been mapped and assigned capability units by the Natural Resources Conservation Service, the assigned capability unit is used. A LCG is determined for each kind of soil and its current land use. Nebraska has three primary land uses. The eastern part of the state is principally a dryland farming area. The central and western regions of the state generally require irrigation for the intensive production of common cultivated crops. Approximately one-half of the acreage in the state is in native grassland. Scattered throughout, there is recreational land, timberland and wasteland.⁴⁵

In an effort to promote the "fair and uniform" assessment of agricultural and horticultural land, the regulations provide LCG definitions and guidelines regarding the development of the soil conversion legend provided by PAD to county assessors to correlate NRCS four-digit soil types with LCGs based on land use.⁴⁶ PAD's regulations designate four principal LCGs under the three primary subclasses of agricultural and horticultural property as follows: (1) Irrigated Cropland – 1A, 2A, 3A, 4A; (2) Dryland Cropland – 1D, 2D, 3D, 4D; and (3) Grassland - 1G, 2G, 3G, 4G.⁴⁷ PAD's regulations also permit county assessors to "create" additional LCG sub-classifications if needed "to achieve uniform and proportionate valuation."⁴⁸

B. Summary of the Evidence

John J. Huse, the Taxpayer, testified at the hearing before the Commission. Huse asserted that the County Board's reliance on the sales comparison approach used by the County Assessor to value the Subject Property for tax years 2012 and/or 2014 was unreasonable or arbitrary for

⁴⁴ 350 Neb. Admin. Code, ch. 14, §002.40 (3/09). See also, 442 Neb. Admin. Code, ch. 5, §031.02 (6/11) (the Commission is allowed to take judicial notice of soil surveys for Nebraska's 93 counties published by the NRCS, which is a subdivision of the United States Department of Agriculture).

⁴⁵ 350 Neb. Admin. Code, ch. 14, §004.08E (3/09).

⁴⁶ 350 Neb. Admin. Code, ch. 14, §004.08A-H (3/09).

⁴⁷ 350 Neb. Admin. Code, ch. 14 §004.08F (03/09).

⁴⁸ 350 Neb. Admin. Code, ch. 14, §004.09 (3/09).

the following reasons: (1) failure to recognize an inter-family sale transaction involving the Subject Property in 2011 for tax year 2012 assessment purposes;⁴⁹ (2) improper inclusion of “premium” agricultural land sales within the County’s three-year look-back window for tax year 2014;⁵⁰ (3) failure to use an income approach to value the Subject Property for tax year 2014;⁵¹ (4) insufficient consideration of his protests in both 2012 and 2014 by the County Board and the County Board’s Referee;⁵² and (5) failure to consider the disproportionate increase in agricultural and horticultural land valuations in comparison to commercial and residential classes of real property for tax year 2014.⁵³

The three Subject Property parcels total 146.69 acres of unimproved agricultural land (36.62 acres + 48.75 acres + 61.62 acres = 146.69 acres).⁵⁴ Huse provided a combined \$372,805 opinion of value for the three Subject Property parcels for tax year 2012, which is based upon 2011 assessed values.⁵⁵ Huse testified that his December 2011 \$65,000 purchase of his sister-in-law’s one-half interest in the 36.62-acre Subject Property parcel in Case Nos. 12A 079 and 14A 056 was based on the County’s 2011 assessed value.⁵⁶

Huse provided a combined \$354,256 opinion of value for the three Subject Property parcels for tax year 2014.⁵⁷ Huse testified that this 2014 opinion of value is based on the \$3,500 per acre amount that a lending institution would approve for him to purchase a similar agricultural parcel which later sold for \$11,500.⁵⁸ Huse also testified that at least two other lending institutions in

⁴⁹ See, E8:2 - E8:5 (Taxpayer’s Packet), E13:2-13:3 (Taxpayer’s 2012 Protest for 36.32-acre parcel), E13:4 (Form 521 Real Estate Transfer Statement for 36.32-acre parcel regarding the December 2011 sale thereof), E13:7 (2012 PRF for 36.32-acre parcel).

⁵⁰ See, E8:2 - E8:5.

⁵¹ See, E8:2 - E8:5.

⁵² See, E8:2 - E8:5.

⁵³ See, E7:89, E7:91, and E7:92.

⁵⁴ See, E8:3.

⁵⁵ See, E8:3 (Taxpayer’s spreadsheet, which sets forth his opinion of value for each Subject Property parcel for tax year 2012 and 2014, and which totals \$372,805 for tax year 2012 and \$354,256 for tax year 2014); E10:14 (PRF for 36.32-acre Subject Property parcel, which indicates a tax year 2011 assessment in the amount of \$94,930); E10:18 (PRF for 61.61-acre Subject Property parcel, which indicates a tax year 2011 assessment in the amount of \$151,125); and E10:22-24 (PRF for 48.75-acre Subject Property parcel, which indicates a tax year 2011 assessment in the amount of \$126,750). [$\$94,930 + \$151,125 + \$126,750 = \$372,805$ opinion of value for tax year 2012.]

⁵⁶ See, E8:3 (Taxpayer’s spreadsheet, which sets forth his opinion of value for each Subject Property parcel for tax year 2012 and 2014); E10:14 (PRF for 36.32-acre Subject Property parcel, which indicates a \$65,000 sale in December 2011, and a tax year 2011 assessment in the amount of \$94,930). The Taxpayer testified that his \$65,000 purchase price for the one-half interest in the 36.32-acre Subject Property parcel from his sister in December 2011 was based on the County’s \$94,930 assessment for tax year 2011, and that this total assessed valuation reflects the County’s valuation of agricultural land at 73% of actual value due for that year ($\$130,000$ actual value x .73 ag adjustment = \$94,930 assessed value; $\$65,000$ actual value of one-half interest x 2 = \$130,000 actual value of 36.32-acre parcel).

⁵⁷ See, E8:3 (Taxpayer’s spreadsheet, which sets forth his opinion of value for each Subject Property parcel for tax year 2014, totaling \$354,256).

⁵⁸ See, E8:3 (Taxpayer’s spreadsheet, which sets forth his opinion of value for each Subject Property parcel for tax year 2014, totaling \$354,256). [36.32-acre Subject Property parcel x \$3,500 per acre = \$127,120 x .69 ag adjustment = 87,713.] [48.75-acre

the Dakota County area limited approval to approximately \$3,500 per acre, and he asserted that agricultural commodity price trend information he submitted does not support the County Board's valuation determinations for tax year 2014.⁵⁹

Jeff Curry, the Dakota County Assessor, testified on behalf of the County Board. He asserted that the 2011 sale of a one-half interest in the 36.32-acre Subject Property was not an arm's length transaction because it involved family members. Consequently, Curry opined that the 2011 sale is not a good indicator of the actual value of real property in Dakota County for tax year 2012 or 2014.

Curry further testified that he values the real property in Dakota County using a mass appraisal model. He asserted that a sales comparison approach using only qualified arm's length transactions was used to value agricultural land such as the Subject Property for tax years 2012 and 2014.

The County Board submitted Property Record Files ("PRFs"), photographs and aerial maps relating to the Subject Property.⁶⁰ This documentation indicates that the substantial majority of the Subject Property is classified as dryland for tax years 2012 and 2014.⁶¹

The County Board did not submit PRFs for parcels included on the County Assessor's qualified agricultural land sales roster for either tax year 2012 or 2014. The County Board submitted a map depicting the location of sales included on the qualified agricultural land sales roster for tax year 2012 only.⁶² The County Board also submitted PRFs for "Equalization" parcels in the Subject Property's market area for tax year 2014 only.⁶³

Subject Property parcel x \$3,500 per acre = \$170,625 x .69 ag adjustment = 117,731.] [61.62-acre Subject Property parcel x \$3,500 per acre = \$215,670 x .69 ag adjustment = \$148,812.] [\$87,713 + \$117,731 + \$148,812 = \$354,256 opinion of value for tax year 2014.]

⁵⁹ See, E8:3 (Taxpayer's spreadsheet, which sets forth commodity prices and his opinion of value for each Subject Property parcel for tax year 2014, totaling \$354,256). [36.32-acre Subject Property parcel x \$3,500 per acre = \$127,120 x .69 ag adjustment = 87,713.] [48.75-acre Subject Property parcel x \$3,500 per acre = \$170,625 x .69 ag adjustment = 117,731.] [61.62-acre Subject Property parcel x \$3,500 per acre = \$215,670 x .69 ag adjustment = \$148,812.] [\$87,713 + \$117,731 + \$148,812 = \$354,256 opinion of value for tax year 2014.]

⁶⁰ See, E9 – E14.

⁶¹ The three Subject Property parcels included a total of nine irrigated acres for tax year 2014, and the 61.62-acre parcel in Case Nos. 12A-077 and 14A-057 included 2.25 acres classified as "road" for tax year 2012. See, E9 – E14.

⁶² E9:11.

⁶³ See, E9 – E14.

B. Valuation Analysis

1. Agricultural and Horticultural Land Values for Tax Year 2012

The Taxpayer asserted that the County Board's determinations for tax year 2012 were unreasonable or arbitrary due to failure to assess all three Subject Property parcels in an amount equal to assessments for tax year 2011.⁶⁴ In support of this assertion, the Taxpayer referenced his December 2011 purchase of a one-half interest in the 36.32-acre Subject Property parcel from his sister-in-law for an amount that equaled the County's 2011 actual value determination.⁶⁵

The County submitted a Form 521 Real Estate Transfer Statement regarding the 36.32-acre Subject Property parcel indicating that the Taxpayer purchased a one-half interest in the land from his sister-in-law, Mary Huse, for \$65,000 on December 12, 2011.⁶⁶ The Form 521 and the Taxpayer's testimony indicate that the transaction involved a transfer between relatives and conveyed a complete ownership interest in the land to the Taxpayer, who previously owned a one-half interest.⁶⁷ The Taxpayer testified that the \$65,000 purchase price for the one-half interest in the 36.32-acre Subject Property parcel was based on the County's \$94,930 assessment for tax year 2011, and that this total assessed valuation reflects the County's assessment of agricultural land at 73% of actual value due for that year (\$65,000 actual value of one-half interest x 2 = \$130,000 actual value of 36.32-acre parcel; \$130,000 actual value x .73 ag adjustment = \$94,930 assessed value).⁶⁸

Jeff Curry, the Dakota County Assessor, testified that the sales comparison approach was used to value the Subject Property for tax year 2012. Although Curry was not the Dakota County Assessor for tax year 2012,⁶⁹ he asserted that the 2011 sale of the one-half interest in the 36.32-acre Subject Property was not an arm's length transaction because it involved family members. Consequently, Curry opined that the 2011 sale is not a good indicator of the actual value of real property in Dakota County.

⁶⁴ See, E8:2 – E8:5.

⁶⁵ See, E8:2 – E8:5 (Taxpayer's Packet), E13:2-13:3 (Taxpayer's 2012 Protest for 36.32-acre parcel), E13:4 (Form 521 Real Estate Transfer Statement for 36.32-acre parcel regarding the December 2011 sale thereof), E13:7 (2012 PRF for 36.32-acre parcel).

⁶⁶ E13:4.

⁶⁷ E13:4.

⁶⁸ See, E13:7 (PRF for the 36.32-acre parcel, which indicates that the \$65,000 transaction amount equaled one-half of the \$130,000 actual value of the land for tax year 2011 - \$130,000 actual value x .73 ag adjustment = \$94,930 assessed value).⁶⁸

⁶⁹ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22, page 41 (Dick Erickson served as the State Assessment Manager for Dakota County, which was operated by the State of Nebraska until June 30, 2012).

The County Board did not submit documentary information to support its 2012 valuations of the Subject Property at the hearing before the Commission, other than a transaction location map and information from the 2012 Reports & Opinions of the Property Tax Administrator (“PTA”) for Dakota County (sometimes referred to herein as the “2012 Reports & Opinions”).⁷⁰ The information from the 2012 Reports & Opinions indicates that Dakota County identified the following two market areas for tax year 2012: (1) Market Area 1 - located in the eastern area of the County surrounding South Sioux City and Dakota City, bordered by the Missouri River on the east and Market Area 2 on the west; and (2) Market Area 2 - the remainder of Dakota County to the west of Market Area 1.⁷¹ The PRFs submitted by the County indicate that the Subject Property parcels are located in Market Area 1 at 1138 160th Street, Dakota County, Nebraska.⁷² The PRFs also assign the parcels to the “Suburban” category.⁷³

Market Area 1 is unique for farmland assessment purposes because its only borders beyond the Missouri River include Market Area 2 to the west, Iowa to the east and north, South Dakota to the north, and Thurston County, Nebraska to the south. The eastern portion of Thurston County, which forms the southern border of Dakota County’s Market Area 1, consists of the Winnebago and Omaha Indian Reservations, so consequently a significant portion of the land in this area is exempt from property taxation.⁷⁴

The following excerpt from the 2012 Reports & Opinions for Dakota County illustrates the distinctive nature of Market Area 1 where the Subject Property parcels are located, and the difficulty that this factor creates for agricultural land valuation purposes using the sales comparison approach:

Market area one consisted of only five sales for analysis purposes. The County considered the general market indication of these five sales to gauge the local market and establish 2012 values. This market area is unique from contiguous

⁷⁰ See, E9:11, E11:11, E13:14 (identical map of sales for each of the three Subject Property parcels); E9:7-E9:10, E11:7-E11:10, E13:10-E13:13 (2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator for Dakota County, Exhibit 22).

⁷¹ See, E9:7-E9:10, E11:7-E11:10, E13:10-E13:13 (2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator for Dakota County, Exhibit 22).

⁷² See, E9:5, E11:5, E13:7.

⁷³ See, E9:5, E11:5, E13:7.

⁷⁴ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator for Thurston County, Exhibit 87:32 & 87:37. The Commission is authorized to take notice of the Reports and Opinions of the Property Tax Administrator as contained in exhibits from Statewide Equalization proceedings under 442 Neb. Admin. Code, ch. 5 §031.02 (06/11) and Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.) (authorizing the Commission to consider and utilize certain published sources without inclusion in the record). The Commission will refer to the Reports and Opinions of the Property Tax Administrator for each respective County referenced herein by reference to each respective County’s Exhibit number from the Commission’s Annual Statewide Equalization Proceedings maintained by the Commission and available on the Commission’s website.

counties because of its location along the low lands near the Missouri River, and the inherent soil characteristics produced from occasional flooding. Lacking comparable markets, additional sales were not available to create a sample statistically adequate and representative of the market area. Low lying land in Burt County and Washington County consist of the same general soil associations, so for purposes of inter county equalization comparisons to those counties values were compared to Dakota. The comparison suggested the values established by Dakota County were reasonably similar to counties with similar land.⁷⁵

As indicated by the above excerpt, Dakota County values for dryland cropland in Market Area 1 are similar to surrounding counties.⁷⁶ Similarly, the University of Nebraska-Lincoln publication entitled “*Nebraska Farm Real Estate Market Highlights*” indicates that the Dakota County values for dryland cropland are appropriate for the northeastern portion of Nebraska for tax year 2012.⁷⁷

The Taxpayer asserted that the tax year 2012 assessed values of the Subject Property’s agricultural and horticultural land should equal 2011 assessed values because the Taxpayer purchased one of those parcels in December 2011 in an arm’s length transaction involving his sister-in-law for an amount that equaled its 2011 assessed value. The Commission notes that while “[i]t is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”⁷⁸ “The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in considering actual value.”⁷⁹

⁷⁵ See, E9:8, E11:8, E13:11 (2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:43).

⁷⁶ See, 9:7 (Inter-County assessment comparison chart) (2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:38); *Nebraska Farm Real Estate Market Developments 2013 – 2014*, p. 32 (contains 2012 value ranges for dryland in the northeastern portion of Nebraska, which includes Dakota County).

⁷⁷ See, *Nebraska Farm Real Estate Market Developments 2013 – 2014*, p. 32 (contains 2012 value ranges for dryland in the northeastern portion of Nebraska, which includes Dakota County). The Commission is allowed to take notice of this publication under 442 Neb. Admin. Code, ch. 5 §031.02 (06/11) and Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.) (authorizing the Commission to consider and utilize certain published sources without inclusion in the record).

⁷⁸ *Forney v. Box Butte Cty. Bd. of Equal.*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

⁷⁹ *US Ecology v. Boyd Cty Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

The Commission further notes that “[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.”⁸⁰ Generally, sales between relatives are not considered arm’s length transactions.⁸¹

Mr. Curry, the Dakota County Assessor, testified that the assessments of the Subject Property for tax years 2012 and 2014 were derived from sales of agricultural or horticultural land that has not substantially changed in terms of use. Additionally, the assessed values per acre as assigned by the County to agricultural and horticultural subclasses are similar to the assessed values per acre in similar counties for tax year 2012.⁸² Therefore, the Commission finds that the Taxpayer has not adduced sufficient evidence to show that the County Board’s determinations regarding the actual value of the three Subject Property parcels are unreasonable or arbitrary for tax year 2012.

2. Agricultural and Horticultural Land Values for Tax Year 2014

The Taxpayer generally asserts that the assessed values of Dakota County agricultural and horticultural land for tax year 2014 were derived with the use of inflated “premium” sales in violation of the Nebraska Constitution and Nebraska Statutes sections 77-112 and 77-1371. The Taxpayer also asserts that the actual value of the Subject Property parcels amounted to \$3,500 for tax year 2014 based on the amount per acre that a lending institution would approve for him to purchase similar agricultural parcel which later sold for \$11,500.

The Taxpayer references Article VIII of the Nebraska Constitution to support his assertion that agricultural land such as the Subject Property should be assessed based on agricultural production value rather than inflated “premium” sales under Nebraska Statutes sections 77-112 and 77-1371. In support of his assertion that the assessment of agricultural land should be derived from production/earnings capacity rather than comparable sales, the Taxpayer relies on

⁸⁰ Neb. Rev. Stat. § 77-112 (Reissue 2009).

⁸¹ *Mass Appraisal of Real Property*, International Association of Assessing Officers, (1999) at 53-54.

⁸² See, 9:7 (2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:38); *Nebraska Farm Real Estate Market Developments 2013 – 2014*, p. 32 (contains 2012 value ranges for dryland in the northeastern portion of Nebraska, which includes Dakota County).

Article VIII, section 1, subsection (5), which is a 1972 amendment to the Constitution of Nebraska stating as follows:

[T]he Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses[.]⁸³

Article VIII of the Constitution provides the foundation for the property tax system in Nebraska. Specifically, Article VIII, section 1, subsection (1), states as follows: “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.”

In addition to the above-noted uniformity and proportionality clause, the property taxation of agricultural land is governed by Article VIII amendments approved by Nebraska voters in 1972 (see language above relied upon by the Taxpayer), 1984, and 1990. The intent of the 1972 Constitutional amendment and its subsequent implementation in Nebraska Statutes sections 77-1343 – 77-1348 includes: (1) promotion of orderly commercial and residential development by discouraging urban sprawl and associated high infrastructure costs; (2) protection of farmers on urban fringes from increased property taxes associated with uses other than agricultural or horticultural; and (3) simplification regarding the assessment of agricultural or horticultural land subject to future development influences.⁸⁴

It is important to note that the framework known as “Greenbelt” or “Special Valuation” effectuated by the 1972 Constitutional amendment to Article VIII is permissive in nature.⁸⁵ In this regard, the language of the amendment states that the “Legislature may enact” special valuation laws. Thus, the Commission finds that the Taxpayer’s assertion that the 1972 Constitutional amendment to Article VIII requires assessment of agricultural land based on production/earnings capacity is without merit.

Additionally, Nebraska Statutes section 77–1344, which the Legislature enacted under the auspices of 1972 Constitutional amendment, provides that special valuation is limited to circumstances where agricultural or horticultural land “has an actual value as defined in [Nebraska Statutes] section 77-112 reflecting purposes or uses other than agricultural or

⁸³ Neb. Const. art. VIII, § 1(5) (1972 Constitutional Amendment implemented at Neb Rev Stats. §§ 77-1343 - 48).

⁸⁴ See, *Committee on Constitutional Revision Records on LB 837*, 82nd Leg., 1st Sess. (1971).

⁸⁵ See, Neb. Const. art. VIII, § 1(5) (the Legislature enacted special valuation laws in the aftermath of 1972 Constitutional Amendment generally codified at Neb Rev Stats. §§ 77-1343 – 48).

horticultural purposes or uses.”⁸⁶ Mr. Curry, the Dakota County Assessor, testified that the assessments of the Subject Property for tax years 2012 and 2014 were derived from sales of agricultural or horticultural land that has not substantially changed in terms of use. Additionally, the Taxpayer did not submit PRFs or other sufficient documentation to support his assertion that the County Board assessed the Subject Property based on inflated sales “reflecting purposes or uses other than agricultural or horticultural” within the meaning of Nebraska Statutes section 77-1344, and there is no evidence that the Taxpayer has even applied for special valuation treatment under Nebraska Statutes sections 77-1343 – 77-1348. Therefore, the Commission finds that the implementation of the 1972 amendment to Article VIII of the Nebraska Constitution contained in Nebraska Statutes sections 77-1343–77-1348 is not applicable for purposes of determining the actual value of the Subject Property for tax years 2012 or 2014.

In addition to the 1972 Constitutional amendment referenced above, Article VIII of the Nebraska Constitution was amended in the 1984 general election to provide for separate classification of agricultural and horticultural land.⁸⁷ This Constitutional amendment was placed before the voters of Nebraska by the Legislature in order to address concern that agricultural land values would increase dramatically in the midst of the farm crisis in the aftermath of the Nebraska Supreme Court’s ruling in *Kearney Convention Center, Inc. v. Buffalo County Board of Equalization* (sometimes referred to herein as “Kearney Convention Center”), which determined that the uniformity clause of Article VIII of the Nebraska Constitution does not permit valuation of farmland at actual value levels less than commercial or residential classes for property tax purposes.⁸⁸ This 1984 amendment stated as follows: “the Legislature may provide that agricultural land and horticultural land use solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation.”⁸⁹

The Legislature enacted legislation (herein referred to as “L.B. 271”) in 1985 to implement the 1984 Constitutional amendment.⁹⁰ L.B. 271 created an assessment valuation system for agricultural land, generally codified at Nebraska Statutes sections 77-1358 and 77-1368, based on production capabilities (“earnings capacity”) rather than market value determined with

⁸⁶ See, Neb. Rev. Stat. § 77-1344 (2009 Reissue).

⁸⁷ See, L.R. 7, 88th Leg., Spec. Sess. (1984) (L.R. 7 amended Article VIII, section 1).

⁸⁸ *Kearney Convention Center, Inc. v. Buffalo County Board of Equalization*, 216 Neb. 292, 344 N.W.2d 620 (1984).

⁸⁹ Legislative Resolution 7, 88th Leg., Spec. Sess. (1984) (Legislative Resolution 7 amended Article VIII, section 1).

⁹⁰ 1985 Neb. Laws 271.

reference to comparable sales.⁹¹ L.B. 271, as codified under Nebraska Statutes sections 77-1330 and 77-1362, required the Tax Commissioner of the Nebraska Department of Revenue to issue a “land valuation manual” consistent with the earnings capacity approach for use by county assessors to assess agricultural land for tax year 1986 and beyond.⁹²

In 1987 the Nebraska Supreme Court considered the L.B. 271 earnings capacity legislation in *Banner County v. State Board of Equalization and Assessment*, which involved the assessment of irrigated land using the land valuation manual issued by the Tax Commissioner for tax year 1986.⁹³ Summarizing the earnings capacity approach codified by L.B. 271, the Nebraska Supreme Court stated as follows:

Section 77-1364 states in part: ‘Income streams for irrigated and dryland cropland shall be computed by multiplying gross receipts by landowner share by county.’ Gross receipts are to be computed ‘by multiplying the most recent five-year average price of a crop by the most recent five-year average yield of a crop and weighting the result by the most recent five-year average cropping pattern.’ Crops included are enumerated in the statute. Such data are to be taken from the Nebraska Crop and Livestock Reporting Service (NCLRS) or other state or federal agencies. Landowner share is defined as the proportion of the gross receipts less landowner expenses

Section 77-1365 sets out the method to be utilized in establishing the capitalization rate. There are two components in the rate: the debt portion and the equity portion, which are based on the relative proportion of real estate debt to farmer equity for the farm sector in the state. The proportions are set at 20 percent debt and 80 percent equity for 1986. After January 1, 1987, those amounts may be adjusted. The percentage of debt is then multiplied by a number equal to the most recent 5-year average of the Federal Land Bank interest rates in the Omaha district, resulting in the weighted debt capitalization rate. The number representing owner equity is then to be multiplied by the most recent 5-year average of 6-month U.S. Treasury bill interest rates, resulting in the weighted equity capitalization rate. The numbers yielded by those computations are then added together to obtain the appropriate capitalization rate.⁹⁴

⁹¹ See, 1985 Neb. Laws 271 (L.B. 271 was codified at Neb. Rev. Stat. § 77-201 (Supp.1985) and Neb. Rev. Stat. §§ 77-112, 77-1330, 77-1343 to 77-1348, and 77-1358 to 77-1368 (Reissue 1986)); See also, Floor Debate on L.B. 271, at 4169-70, 4182-85 (statements of Sen Landis, Chairman of Task Force Committee, indicating that the sales comparison approach is ill-suited for purposes of valuing farmland).

⁹² See, 1985 Neb. Laws 271, Secs. 7 – 13; Neb. Rev. Stat. §§ 77-1330 and 77-1362 (required county assessors to use the Tax Commissioner’s land valuation manual based on the earnings capacity approach to value farmland for tax year 1986 and beyond) (Reissue 1986); *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 246, 411 N.W.2d 35, 42 (1987).

⁹³ *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁹⁴ *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 247-248, 411 N.W.2d 35, 42-43 (1987).

In the above-noted case, the Banner County Board determined that the Tax Commissioner's land valuation manual calculation overvalued irrigated cropland for tax year 1986 due to the use of incorrect earnings capacity factors, and that values in adjoining counties for similar land were "considerably" lower.⁹⁵ Consequently, the County Board reduced irrigated cropland assessments for tax year 1986 using corrected earnings capacity factors authorized by the Nebraska Statutes codified under L.B. 271.⁹⁶ In reversing the State Board of Equalization's ruling that the Banner County Board did not have the power to deviate from the Tax Commissioner's land valuation manual valuations for assessment purposes, the Nebraska Supreme Court commented as follows regarding the earnings capacity farmland valuation framework created by the 1984 amendment to Article VIII of the Nebraska Constitution and L.B. 271:

Since [the 1984 Constitutional amendment] did not repeal the uniformity clause, expressly or by implication, the two clauses must be read in such a way as to give effect to both clauses. Thus, L.B. 271 must meet the requirements of both clauses to pass the test of constitutionality. Specifically, [the 1984 Constitutional amendment] permitted the Legislature to classify property as a separate class, but the uniformity clause required the Legislature to treat that class in a uniform manner with other tangible property. ...

Since the uniformity clause was not repealed, the Legislature can divide the class of tangible property into different classifications, but these classifications remain subdivisions of the overall class of 'all tangible property,' and there must be a correlation between them to show uniformity. Such a correlation is made by evidence that all tangible property has been uniformly assessed.

No evidence of such a correlation is present in the record before us or in the statutes implementing [the 1984 Constitutional amendment]. In fact, our review of the statutes shows the correlation requirement was entirely disregarded. Section 77-201 now excepts agricultural land from being taxed at its actual value, but requires such taxation of other tangible property and real estate.

Section 77-112(1) defines actual value for tangible property and real estate as the value ascertained by using a formula containing seven different components to be considered as applicable to the property in question. Subsection (2) of that section provides that the actual value of agricultural land is the value obtained by the application of the earnings capacity formula set forth in §§ 77-1358 to 77-1368.

These sections provide for the separate classification and valuation of agricultural property and are consistent with [the 1984 Constitutional amendment].

⁹⁵ *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 237, 411 N.W.2d 35, 37 (1987).

⁹⁶ *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 237-243, 257-258, 411 N.W.2d 35, 37-40, 48. (1987).

Conspicuously absent from these statutes, however, is a requirement that the resulting values obtained for agricultural land be correlated with the values obtained for other real property, as required by the uniformity clause.

These statutes have the effect of permitting the Legislature to do indirectly what it is prevented by the Constitution from doing directly--the taxation of agricultural land in a nonuniform manner from the taxation of other tangible property. This finding is also supported by § 77-1358(3), which states the 1986 land manual valuation method is designed to ‘maintain the historical valuation relationship between agricultural land ... and all other real property.’ The historical relationship between such properties in this state is the undervaluation of agricultural property as compared to other real property.⁹⁷

In response to the Nebraska Supreme Court’s 1987 decision in *Banner County v. State Board of Equalization and Assessment*, Article VIII was amended once again in 1990 to exclude agricultural and horticultural land from the uniformity clause of the Nebraska Constitution.⁹⁸ This 1990 amendment, which remains in effect as of the date of this opinion, states as follows:

[T]he Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land[.]⁹⁹

L.B. 320, enacted in 1991, implemented this 1990 Constitutional amendment.¹⁰⁰ The legislative history of L.B. 320 as originally introduced indicates that its intent was to return to the earnings capacity formula devised by L.B. 271 in 1985 (summarized above by the Nebraska Supreme Court in *Banner County v. State Board of Equalization and Assessment*).¹⁰¹ An amendment to this legislation, however, modified the L.B. 271 earnings capacity formula by requiring the use of market-based sales for capitalization rate determination purposes -- as opposed to L.B. 271’s use of a non-sales-based debt/equity rate derived with reference to the Omaha Federal Land Bank’s five-year interest rate (reflecting the cost of borrowed money) and

⁹⁷ *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 253-255, 411 N.W.2d 35, 46-47 (1987).

⁹⁸ Amended 1990, L.R. 2, 1989 Neb. Laws (L.R. 2 amended Article VIII, section 1) (the Revenue Committee’s Statement of Intent for L.R. 2 states that the resolution “responds to the doubt Nebraska Supreme Court has cast on the validity of [Constitutional] Amendment 4 of 1984 and LB 271 of 1985.”).

⁹⁹ Neb. Const. art. VIII, § 1(4).

¹⁰⁰ 1991 Neb. Laws 320.

¹⁰¹ See, Revenue Committee Statement, 1991 Neb. Laws 320.

the five-year average of the six-month U.S. Treasury bill rate (reflecting interest earned on investments other than farmland).¹⁰² As the following “Explanation of Amendments” language from the Legislature’s Revenue Committee indicates, the intent of the amended version of L.B. 320 was to value agricultural and horticultural land at 80% of market or actual value:

The amendment to LB 320 devises a new and different formula for the valuation of agricultural and horticultural land. The new formula mixes market value as determined by comparable sales and net income per acre to come up with a market derived capitalization rate. That capitalization rate would then be subject to an adjustment factor which takes into consideration such items as parcelization and risk. The result is a formula which puts each subclass or categorization of ag land at 80% of market which insures uniformity within the class of agriculture. Other language in the amendment codifies comparable sales language and uniformity as well as functions by county boards of equalization and the Dept. of Revenue.¹⁰³

Another significant development for purposes of this opinion occurred in 1997 with the passage of L.B. 270 (L.B. 270 should not be confused with L.B. 271 discussed above, which was passed in 1985).¹⁰⁴ L.B. 270 required that agricultural and horticultural land “shall be valued at 80% of its actual value.”¹⁰⁵ L.B. 270 also eliminated statutory language permitting valuation based on land productivity, which had survived the above–noted constitutional and legislative responses to the Nebraska Supreme Court’s decision in *Banner County v. State Board of Equalization and Assessment* that impaired the viability of the earnings capacity farmland assessment system created by L.B. 271 in 1985.¹⁰⁶

As a result of these L.B. 270 revisions enacted in 1997 that focus on actual/market value, the “preferred” method to assess farmland in Nebraska is based on market sales (i.e., the sales comparison approach).¹⁰⁷ The preferential treatment envisioned by the 1984 and 1990 amendments to Article VIII of the Nebraska Constitution is effectuated by assessing farmland at a percentage of actual value (now 75% of actual value via L.B. 968 enacted in 2006), unlike residential and commercial classes which are assessed at 100% of actual value under Nebraska Statutes section 77-201(1).¹⁰⁸

¹⁰² See, Revenue Committee Statement, 1991 Neb. Laws 320.

¹⁰³ See, Revenue Committee Statement, 1991 Neb. Laws 320.

¹⁰⁴ See, 1997 Neb. Laws 270, Sec. 11.

¹⁰⁵ See, 1997 Neb. Laws 270, Sec. 11 (modifying Neb. Rev. Stat § 77-201).

¹⁰⁶ See, 1997 Neb. Laws 270, Sec. 4 (modifying Neb. Rev. Stat § 77-112 via removal of “earnings capacity” clause).

¹⁰⁷ See, 350 Neb. Admin. Code, ch. 14, § 006.01-03 (3/09).

¹⁰⁸ See, 2006 Neb. Laws 968, Sec. 2 (modifying Neb. Rev. Stat § 77-201), Neb. Rev. Stat § 77-201 (Reissue 2009).

The Nebraska Department of Revenue’s Property Assessment Division (herein sometimes referred to as “PAD”) has issued regulations regarding the assessment of agricultural and horticultural land that supplement Nebraska Statutes.¹⁰⁹ These regulations state that the sales comparison approach identified as a “professionally accepted mass appraisal” method under Nebraska Statutes section 77-112 is the “preferred” method for the valuation of farmland in Nebraska.¹¹⁰ The regulations also state, however, that the income approach remains as a viable valuation method, and provide parameters for its use regarding the valuation of agricultural and horticultural land.¹¹¹

The foregoing history regarding Nebraska’s property taxation of farmland illustrates an evolution from a system based on land productivity (earnings capacity income approach) to actual/market value (sales comparison approach). The Commission notes, however, that similar to the analysis above regarding tax year 2012, the unique nature of Dakota County’s Market Area 1 where the Subject Property parcels are located generates concern regarding the reliability of the sales comparison approach for purposes of valuing agricultural land for tax year 2014. In this regard, following is an excerpt from the 2014 Reports & Opinions for Dakota County that illustrates the unique nature of Market Area 1 and the difficulty that this factor creates with respect to agricultural land valuation using the sales comparison approach:

Analysis of Dakota County alone indicated that the oldest year in the study period is represented with very few sales. The sample was expanded with comparable sales from neighboring counties to ensure proportionality while maintaining representative samples for the majority land use. The sample size for this county is smaller than any other agricultural base in the northeast region, primarily because the agricultural base in Dakota County represents only 44% of the total valuation base.

Market Area 1 is unique from adjoining counties because of its location along the low lands near the Missouri River, and the inherent soil characteristics produced from occasional flooding. Lacking adjoining county comparable markets, it is difficult to have additional sales to create an adequate sample statistically. As reported in the county abstract approximately 32% of area one is irrigated, 60% is classified as dry land use and the remainder is grass and waste. Market area one consisted of only seven sales for analysis purposes. The sample was expanded with five sales from Burt County with similar soil characteristics. Low lying land in Burt County consists of the same general soil associations, so for purposes of

¹⁰⁹ 350 Neb. Admin. Code, ch. 14 (3/09).

¹¹⁰ See, 350 Neb. Admin. Code, ch. 14, § 006.01-03 (3/09).

¹¹¹ 350 Neb. Admin. Code, ch. 14, § 006.01-03 (3/09).

inter county equalization comparisons to Burt County values were compared to Dakota. The comparison suggested the values established by Dakota County were reasonably similar with Burt County.¹¹²

The above-referenced excerpt is problematic in part for the following reasons: (1) Dakota County values for irrigated and dryland cropland for tax year 2014 are significantly higher than Burt County, which is south of Thurston County where the Omaha and Winnebago Indian reservations are located south of Market Area 1 in Dakota County;¹¹³ and (2) scarcity of comparable sales.¹¹⁴ On the other hand, the University of Nebraska-Lincoln publication entitled “*Nebraska Farm Real Estate Market Highlights*” indicates that the Dakota County values for irrigated and dryland cropland are appropriate for the northeastern portion of Nebraska.¹¹⁵

The Taxpayer asserted that the tax year 2014 assessed values of the Subject Property’s agricultural and horticultural land should not be based on the sales comparison approach that inappropriately includes inflated “premium” sales that are inconsistent with agricultural use, and should be based on \$3,500 per acre valuation opinions issued by area lending institutions. Other than the Taxpayer’s testimony and documentation regarding commodity prices, however, the parameters used to derive this \$3,500 loan value are not in evidence. Additionally, other than the documentation regarding commodity prices, the Taxpayer also did not submit documentation to meet the income approach parameters for valuing farmland contained in PAD’s regulations noted above.

Mr. Curry, the Dakota County Assessor, testified that the assessments of the Subject Property for tax years 2012 and 2014 were derived from sales of agricultural or horticultural land that has not substantially changed in terms of use. Additionally, other than testimony, the Taxpayer did not submit PRFs or other documentation to quantify or otherwise clearly and convincingly support his assertion that the County Board assessed the Subject Property based on inflated “premium” sales within the meaning of Nebraska Statutes section 77–1371(3). Therefore, the Commission finds that the Taxpayer has not adduced sufficient evidence to show that the County

¹¹² E10:7 (2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:23).

¹¹³ See, E10:6 (2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:21).

¹¹⁴ See, 2014 Statewide Equalization Exhibit 101:2 (Agricultural Land Analysis Procedure, which states that 30 sales are required for statistical sufficiency, although exceptions to this threshold are also described).

¹¹⁵ See, *Nebraska Farm Real Estate Market Developments 2013 – 2014*, p. 32 (contains 2014 value ranges for irrigated and dryland cropland in the northeastern portion of Nebraska, which includes Dakota County). The Commission is allowed to take notice of this publication under 442 Neb. Admin. Code, ch. 5 §031.02 (06/11) and Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.) (authorizing the Commission to consider and utilize certain published sources without inclusion in the record).

Board's determinations regarding the actual value of the three Subject Property parcels are unreasonable or arbitrary for tax year 2014.

3. Special Valuation of Agricultural and Horticultural Land for Tax Years 2012 & 2014

As discussed previously, the Commission is authorized to take notice of the Reports and Opinions of the Property Tax Administrator as contained in exhibits from Statewide Equalization proceedings.¹¹⁶ Of particular note, the 2012 Reports & Opinions state as follows regarding influenced sales in Dakota County's Market Area 1 where the Subject Property is located:

The land in market area 2 has been identified as the area least likely to be influenced by nonagricultural uses. . . . Land in market area 1 is located in an area where sales of farm property have sold substantially higher than in the surrounding agricultural markets. Trends along the south and northwest sections of South Sioux City have been toward commercial and industrial usage.¹¹⁷

L.B. 808, enacted in 2006, removed agricultural zoning language from the definition of land that can qualify for special valuation treatment.¹¹⁸ Accordingly, the Taxpayer is eligible to apply for special valuation treatment if he desires under Nebraska Statutes sections 77-1343 - 1348.¹¹⁹

The Commission notes that PAD's Chapter 11 special valuation regulations impose a requirement on county assessors to conduct an income analysis together with a sales comparison approach (in contrast, as noted above, PAD's Chapter 14 agricultural and horticultural land valuation regulations permit use of the sales and income approaches, but state that the former technique is "preferred").¹²⁰ Specifically, these regulations state as follows:

The assessor shall capitalize net cash rent to determine a valuation based on the earnings of the property from the agricultural or horticultural use only. The valuation indicated by such an income capitalization approach shall be used as the special valuation if the market comparison approach results in a value that reflects a value influenced by purposes and uses other than agricultural or horticultural. Where the differences between the market comparison approach and income

¹¹⁶ See, 442 Neb. Admin. Code, ch. 5 §031.02 (06/11). See also, Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.) (authorizing the Commission to consider and utilize certain published sources without inclusion in the record).

¹¹⁷ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:21.

¹¹⁸ 2006 Neb. Laws 808, Secs. 27 - 28 (amending Neb. Rev. Stat. §§ 77-1343 – 77-1344). The Commission notes that L.B. 808, Sec. 5, incorporated agricultural zoning language in Neb. Rev. Stat. §§ 19-2428 – 2431, but it does not appear that this language continues to require farmland to be in an area zoned for agricultural or horticultural use for purposes of the special valuation statutes found at Neb. Rev. Stats. §§ 77-1343 – 1348.

¹¹⁹ Neb. Rev. Stat. §§ 77-1343 – 77-1348 (Reissue 2009).

¹²⁰ 350 Neb. Admin. Code, ch. 11, § 005.03 (3/09).

capitalization approach is more than a mere difference of opinion the assessor must determine which value most accurately reflects the property's value for agricultural or horticultural purposes.¹²¹

The Subject Property is located in Market Area 1 within 10 miles of South Sioux City and Dakota City, which are Dakota County's main population centers situated adjacent to the Missouri River and Interstate 29.¹²² Also, the Commission notes that Dakota County is in the Sioux City, Iowa Metropolitan Statistical Area ("MSA") and the Sioux City – Vermillion, South Dakota Metropolitan/Micropolitan Combined Statistical Area ("MMCSA").¹²³ MSAs and MMCSAs denote areas that encompass a large population base and significant economic and social interactions.¹²⁴ Thus, it is possible that the Subject Property is subject to influences that could be addressed via Nebraska Statutes and regulations governing special valuation of farmland.¹²⁵

4. Consideration of the Taxpayer's Protests by the County Board

The Taxpayer asserts that the County Board rendered insufficient consideration of his claims during the protest process in 2012 and 2014. In support of this assertion, the Taxpayer contends

¹²¹ 350 Neb. Admin. Code, ch. 11, § 005.03 (3/09). The Commission notes that PAD's special valuation regulations state that "typical" income and expense information is required thereunder, indicating that actual Subject Property income/expense information is not a necessity. See, 350 Neb. Admin. Code, ch. 11, § 005.03A-B (3/09); 2014 Statewide Equalization Exhibit 105:4 (PAD's "2014 Special Valuation of Agricultural Land Measurement Methodology," which indicates that "typical" income/expense information is available from a variety of sources, including the United States Department of Agriculture and the University of Nebraska, Lincoln). Thus, the 2012 Dakota County Reports & Opinions (Exhibit 22:40 – 22:41) statement that an income approach for special valuation purposes was possibly not conducted due to unavailability of actual information is problematic. The Commission also notes that PAD's special valuation regulations appear to enable use of a capitalization rate derived from sources other than comparable sales, similar to the L.B. 271 "earnings capacity" approach enacted in 1985 (discussed above). See, 350 Neb. Admin. Code, ch. 11, § 005.03C (3/09).

¹²² See, U.S. Department of Agriculture Natural Resources Conservation Service ("NRCS") Web Soil Survey (Commission is allowed to take statutory notice of this resource under 442 Neb. Admin. Code, ch. 5 §031.02 (06/11) and Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.)); 2012 & 2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22.

¹²³ See, 44 U.S.C. 3504(e)(3) and 31 U.S.C. 1104(d) (MSA statutes), United States Office of Management & Budget ("OMB") Bulletin No. 13-01 (February 28, 2013, issued pursuant to preceding MSA statutes).

¹²⁴ See, 44 U.S.C. 3504(e)(3) and 31 U.S.C. 1104(d) (MSA statutes), United States Office of Management & Budget ("OMB") Bulletin No. 13-01 (February 28, 2013, issued pursuant to preceding MSA statutes).

¹²⁵ The 2012, 2014 & 2015 Dakota County Reports & Opinions of the Property Tax Administrator indicate that the County Assessor determined that parcels qualified for special valuation were valued the same as uninfluenced agricultural and horticultural property for those tax years. See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:39 – 22:41 (State Appraiser's special valuation methodology), Exhibit 22:75 ("Insufficient sales to calculate reliable statistics" for special valuation level of value purposes for tax year 2012 – Exhibit 22:52 indicates 44 parcels qualified for special valuation in Dakota County in tax year 2012); 2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:22 (Assessor letter regarding special valuation), Exhibit 22:58 ("Insufficient sales to calculate reliable statistics" for special valuation level of value purposes for the prior tax year 2013 – Exhibit 22:37 indicates 46 parcels qualified for special valuation in Dakota County in tax year 2014); 2015 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22:25 – 22:26 (Assessor letter regarding special valuation), Exhibit 22:51 ("Insufficient sales to calculate reliable statistics" for special valuation level of value purposes for prior tax year 2014 – Exhibit 22:45 indicates 46 parcels qualified for special valuation in Dakota County in tax year 2015).

that the Commission must find that the County Board determinations were unreasonable or arbitrary because the County Assessor did not provide documents from the Referee hearing to the County Board, and because the County Assessor did not discuss the Subject Property in detail at the County Board hearing.

Nebraska Statutes section 77-1502.01 requires the Referee and not the County Assessor to supply the County Board with all Referee hearing documents. The County Assessor testified that he did not provide all of the Referee hearing documents to the County Board, but there is no indication that the Referee did not provide all of the documents to the County Board as required. While the County Board did not openly discuss the Subject Property in the hearing, there is also no evidence that the County Board did not examine the documents prior to the hearing.

Further, all hearings before the Commission are de novo.¹²⁶ The Commission may consider new theories, arguments, and evidence even if the evidence was not provided to the County Board.¹²⁷ For this reason, even had the Referee not appropriately provided the County Board with the hearing documents, the Taxpayer's rights could be protected by the ability to present the evidence to the Commission.

For the reasons discussed above, the Commission finds that the Taxpayer's assertion that the County Board did not sufficiently consider his protests does not amount to sufficient evidence that the County Board's determinations were unreasonable or arbitrary for tax years 2012 and 2014.

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."¹²⁸ Equalization is the process of ensuring that all taxable property is placed on the

¹²⁶ See, Neb. Rev. Stat. §77-5016(8) (2014 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).

¹²⁷ See, Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2014); See also, *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, N.W.2d 802, 813 (2008).

¹²⁸ *Neb. Const.*, Art. VIII, §1.

assessment rolls at a uniform percentage of its actual value.¹²⁹ 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.¹³⁰ 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.¹³¹ 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.¹³² 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.¹³³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹³⁴ 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 his 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].”¹³⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹³⁶

B. Summary of the Equalization Evidence & Analysis

The Taxpayer contends that the Subject Property is not equalized with residential and commercial properties because the assessed value of agricultural and horticultural land in Dakota County has increased by 13% while the assessed values of some residential and commercial properties have decreased.¹³⁷ The Nebraska Constitution, Article VIII, §1(1) requires that taxes are levied uniformly and proportionately. The Nebraska Constitution, Article VIII, §1(4) also permits the Legislature to enact laws requiring the treatment of agricultural and horticultural land

¹²⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹³⁰ *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).

¹³¹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹³² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³³ *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).

¹³⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹³⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹³⁶ *Id.* at 673, 94 N.W.2d at 50.

¹³⁷ See, E14:3, E7:89, E7:91 (Cumulative % Change Chart from 2014 Dakota County R&O, E22, showing 240% cumulative increase in the valuation of agricultural & horticultural land over the period 2003 – 2013, in comparison to 32% for residential and 44% for commercial over the same period), and E7:92.

as a distinct class of property and allowing the assessment of agricultural and horticultural in a manner that is not uniform with other classes of real property:

[T]he Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land[.]

The Legislature enacted laws consistent with this constitutional permission and determined that agricultural and horticultural land constitutes a separate and distinct class of real property, and that the assessment of the agricultural and horticultural land need not be uniform and proportionate with the assessment of other classes of real property.¹³⁸ The Legislature enacted laws that value agricultural and horticultural land at 75% of actual value, whereas all other classes of real property are valued at 100% of actual value.¹³⁹ It is, therefore, inappropriate to compare agricultural and horticultural land to real property in another class for purposes of establishing disproportionate values in a valuation hearing.¹⁴⁰

The Nebraska Constitution still requires, however, that the all agricultural and horticultural land within a taxing jurisdiction be assessed at a uniform and proportionate of level.¹⁴¹ Therefore, it is acceptable to compare the assessed value of substantially similar agricultural and horticultural land, or the ratios of assessed value to actual value of agricultural and horticultural land within the same taxing jurisdiction, in order to determine if the agricultural and horticultural land was assessed uniformly and proportionately. All parties agreed that all agricultural and horticultural land within Dakota County was taxed uniformly and proportionately.

VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

¹³⁸ See, Neb. Rev. Stat. §77-1342 (2014 Cum. Supp.).

¹³⁹ See, Neb. Rev. Stat. §77-201(2) (Reissue 2009).

¹⁴⁰ See, *Krings v. Garfield County Board of Equalization*, 286 Neb. 352, 835 N.W.2d 750 (2013).

¹⁴¹ See, Neb. Cons. Art. VIII, §1(4).

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

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dakota County Board of Equalization determining the value of the Subject Property parcels for tax years 2012 and 2014 are affirmed.¹⁴²
2. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-077 and 14A-057 for tax year 2012 is: \$196,115.
3. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-077 and 14A-057 for tax year 2014 is: \$320,735.
4. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-078 and 14A-058 for tax year 2012 is: \$164,140.
5. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-078 and 14A-058 for tax year 2014 is: \$269,460.
6. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-079 and 14A-056 for tax year 2012 is: \$122,290.
7. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-079 and 14A-056 for tax year 2014 is: \$202,500.
8. This decision and order, if no appeal is timely filed, shall be certified to the Dakota County Treasurer and the Dakota County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
9. Any request for relief, by any party, which is not specifically provided for by this decision and order is denied.
10. Each party is to bear its own costs in this proceeding.
11. This decision and order shall only be applicable to tax years 2012 and 2014.

¹⁴² 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.

12. This decision and order is effective for purposes of appeal on June 12, 2015.

Signed and Sealed: June 12, 2015.

Thomas D. Freimuth, Commissioner

SEAL

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

Commissioner Salmon, concurring in the result but on other reasoning:

I concur with Commissioner Freimuth's equalization analysis, his analysis of the obligation of the referee and not the County Assessor to provide the County Board with documents from the referee's hearing, his determination that the Nebraska Constitution does not require the use of the income approach to value agricultural and horticultural land, his analysis that the Taxpayer failed to file for special valuation for the tax years at question, and his conclusion that the County Board's determinations should be affirmed. However, I do not share his concerns regarding the use of the sales comparison approach in Market Area 1 of Dakota County, and while I share his conclusions that special valuation statutes are not applicable, and that the Taxpayer's purchase of a half interest of a portion of his Subject Property is not an arm's length transaction, I do so on expanded reasoning.

I. Analysis

A. Nebraska Special Valuation and Premium Sales

The Taxpayer has asserted that the Nebraska Constitution Article VIII, § 1(5) imposes restrictive standards for the assessment of agricultural and horticultural land that are only satisfied by the assessment of agricultural and horticultural land using the income approach. The Nebraska Constitution Article VIII, §1(5) states in relevant part:

[T]he Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses[.]

The Nebraska Constitution, therefore, permitted the Legislature to develop the manner and criteria for the valuation of agricultural and horticultural land at a value other than actual value when the agricultural and horticultural land's actual value is impacted by a use or purpose other than a use for an agricultural or horticultural purpose.¹⁴³ The Legislature has enacted laws permitting the valuation of agricultural and horticultural land at a value other than its actual value when the actual value of the agricultural and horticultural land is influenced by uses for purposes other than agricultural or horticultural uses.¹⁴⁴ The Legislature has labeled the value of agricultural and horticultural land at a value other than actual value when the actual value of the agricultural and horticultural land is influenced by uses for purposes other than agricultural or horticultural purposes as special valuation, or the special value of the agricultural and horticultural land.¹⁴⁵

Nebraska Statutes outline the specific requirements and criteria necessary for agricultural and horticultural land to be assessed at its special value. The Legislature determined that the agricultural and horticultural land may only be assessed at its special value upon application and approval.¹⁴⁶ There is no indication in the current case that an application for special valuation was filed for the Subject Property for either of the applicable years. Therefore, even if the Taxpayer's assertions that the sales of agricultural and horticultural land in Dakota County were being influenced by their value for purposes other than agricultural or horticultural purposes were correct, the Commission could not order the assessment of the Subject Property at its special valuation. I, therefore, concur with Commissioner Freimuth's opinion that the County Assessor was not obligated to determine if the Subject Property should receive special valuation.

Additionally, I find that the Taxpayer has not presented sufficient evidence to indicate that the sales of agricultural and horticultural land in Dakota County used to determine the assessed

¹⁴³ See, Neb. Cons. Art. VIII, §1(5).

¹⁴⁴ See, Neb. Rev. Stat. §77-1344 (Reissue 2009).

¹⁴⁵ See, Neb. Rev. Stat. §77-1344 (Reissue 2009).

¹⁴⁶ See, Neb. Rev. Stat. §77-1344 (1) and §77-1345 (Reissue 2009).

value of the Subject Property for tax years 2012 and 2014 were influenced by the uses of the agricultural and horticultural land for purposes other than agricultural or horticultural purposes, or sold for a premium price. The Taxpayer asserted that the sales used to develop the Subject Property's assessed values were premium sales, or sales in which the potential buyer paid a premium for the real property, and that the sale price of agricultural and horticultural land was the result of real property speculation which the Taxpayer asserted was not an agricultural or horticultural use. In support of this assertion the Taxpayer alleged he was unable to obtain financing to purchase some of the sold property for the sale prices because a typical small farmer and small agricultural or horticultural operation could not sustain the operations at those costs.¹⁴⁷

It may be true that the typical small farmer, one Huse classified as owning around 160 acres, is having difficulty competing in the open market with larger operations with more resources, but the effect of the participation of large or corporate farm operations on the sales prices of agricultural and horticultural land is not a non-agricultural or non-horticultural influence. The difference between the amount a smaller farmer can afford to pay for agricultural and horticultural land and the amount a large or corporate farmer can afford to pay for agricultural and horticultural land does not constitute a premium. Instead it is the natural economic evolution of the typical participants in the market.

Nebraska Statute requires the consideration of whether the sales price for agricultural and horticultural land included a premium paid because of the proximity of the real property or tax consequences that result in the buyer paying more than actual value of the real property.¹⁴⁸ The plain language of the statute supports the definition of a premium as that amount of the sale price of agricultural and horticultural land which exceeds the actual value of the real property.¹⁴⁹ The difference between what a large or corporate farm can afford to pay for agricultural and horticultural land and what a small farmer can afford to pay for agricultural and horticultural land does not constitute a premium, but the differences between the resources of potential market participants.

¹⁴⁷ I note that the Taxpayer discussed alleged conversations he had with financial institutions regarding the amount of money they would finance for an equity loan of a specific parcel. However, none of the financial institution participants were available to testify and the County Board timely objected to E7:90. The objection was sustained. I, therefore, give no weight to any specific comments made regarding the content of E7:90. I additionally do not find that that Taxpayer's assertions regarding these conversations amount to clear and convincing evidence.

¹⁴⁸ See, Neb Rev. Stat. §77-1371(3) (2014 Cum. Supp.).

¹⁴⁹ See, *Id.*

The County Assessor testified that all of the agricultural and horticultural land which produced sales contained in the County's sales file continued its use for agricultural or horticultural purposes after the sales. There is no indication or allegations that proximity or tax consequences impacted the sales' prices.

Actual value is defined by Nebraska Statute as:

[T]he market value of real property in the ordinary course of trade. 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. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and 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 consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.¹⁵⁰

The circumstances of the sales of agricultural and horticultural land included in the sales file as described by the Taxpayer are properly classified as typical circumstances in arm's length transactions in an economic environment where participants have unequal resources.

B. Purchase of One-Half Interest of a Portion of the Subject Property

The Taxpayer also asserts that the sale price of the Subject Property in 2011, wherein he purchased a half interest in a portion of the Subject Property from his sister, further supports his assertion that the Subject Property was over-assessed in 2012. However, the County Assessor determined that the sale was not an arm's length transaction. Sales between relatives are generally suspect.¹⁵¹ This sale was also for a partial interest, another suspect class of sales.¹⁵² I concur with Commissioner Freimuth that this supports the conclusion that the transaction was not arm's length. Additionally, there was no opportunity for competition from other market

¹⁵⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵¹ International Associations of Assessing Officers, *Fundamentals of Mass Appraisal*, at 73-74 (2011).

¹⁵² See, International Associations of Assessing Officers, *Fundamentals of Mass Appraisal*, at 74-75 (2011).

participants. An arm's length transaction cannot occur without exposure on the open market sufficient to allow the opportunity for market participation.¹⁵³

Finally, the Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.¹⁵⁴ Nebraska Statutes permit the county assessor to value the Subject Property using the sales comparison approach, cost approach, income approach, or any commonly accepted mass appraisal technique and define actual value.¹⁵⁵

“The terms *price*, *cost*, and *value* are used and defined carefully by appraisers.”¹⁵⁶ “The term price refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.”¹⁵⁷ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵⁸ Actual value is defined by Nebraska Statutes section 77-112 and means “the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market” and not the particular amount of a specific transaction.¹⁵⁹ The distinctions between *price* and *actual value* are meaningful. They acknowledge that circumstances and factors may effect a particular purchase price to such an extent that it is of limited value or irrelevant in determining the actual value of a property. Factors which tend to illustrate that a transaction is not an arm's length transaction harm the credibility and relevance of a purchase price in determining the actual value of a subject property.

Even an arm's length transaction is not conclusive of the actual value of the Subject Property.¹⁶⁰ When giving the sale consideration, the Commission may assign weight to the sale based upon the other evidence presented.¹⁶¹ The mere fact that only a single sale is presented as evidence of actual value may be given weight by the trier of fact.¹⁶² Given the current statutory scheme, which defines actual value as “the most probable price expressed in terms of money that

¹⁵³ See generally, Appraisal Institute, *The Appraisal of Real Estate*, at 58-60 (14th ed. 2013).

¹⁵⁴ *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

¹⁵⁵ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁵⁶ Appraisal Institute, *The Appraisal of Real Estate*, 13th Ed. (2008) at 21.

¹⁵⁷ *Id.*

¹⁵⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵⁹ Neb. Rev. Stat. §77-112 (Reissued 2009).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001)(Citations Omitted) (“Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.”).

a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and 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[.]”¹⁶³ this Commissioner concurs with the Nebraska Court of Appeals in *Cabela’s Inc.*, “the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁶⁴

I also conclude that the facts in this case do not support the assertion that the sale was an arm’s length transaction, and I, therefore, give it little weight.

C. Sales Comparison Approach Market Area 1

I do not share Commissioner Freimuth’s concern about the use of the sales comparison approach to determine the actual value of agricultural and horticultural land in Market Area 1 of Dakota County. The Reports and Opinions of the Property Tax Administrator indicate that the low number of total sales makes has made the valuation of the agricultural and horticultural land in Dakota County difficult, in part, because of the unique characteristics of the market area. However, it is my opinion that it would be no more difficult to use the sales comparison approach to derive the actual value of the real property than any other professionally accepted approach.

Even within the income approach, the approach the Taxpayer asserted should be use to value the Subject Property, the sales of real property in the market area often influence the determination of the actual value of the real property.¹⁶⁵ Additionally none of the published sources indicate that assessed values are not consistent with market indicators of actual value.¹⁶⁶

Finally, the sales comparison approach is a legally and professionally accepted method for valuing agricultural and horticultural land. As indicated by sources created by the Appraisal Institute on the appraisal of rural property:

¹⁶³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶⁴ *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁶⁵ See, The Appraisal Institute, *The Appraisal of Real Estate*, at 491-508 (14th ed. 2013).

¹⁶⁶ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22; 2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 22; and *Nebraska Farm Real Estate Market Developments 2013 – 2014*, p. 32.

The sales comparison approach is generally recognized as the most persuasive indication of market value because it is based on actual sales of similar properties. The sale price of a comparable property is a fact.¹⁶⁷

II. Conclusion

Because of all the forgoing I find that the Taxpayer has not adduced clear and convincing evidence that the County Board's determination of the taxable value of the Subject Property was arbitrary or unreasonable. I concur with Commissioner Freimuth that the County Board's determinations in the above captioned cases should be affirmed.

Nancy J. Salmon

¹⁶⁷ Appraisal Institute, *The Appraisal of Rural Property*, at 253 (2nd ed. 2000).