

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bernard J. Morello,
Appellant,

v.

Douglas County Board of Equalization
Appellee.

Case Nos: 14A 092, 14A 093, 14A 094,
14A 095, 14A 096, 15A 239, 15A 240,
15A 241, 15A 242, 15A 243

Decision and Order
Affirming the Decision of the Douglas
County Board of Equalization in Case No.
14A 095

Decision and Order Reversing the Decisions
of the Douglas County Board of
Equalization in Case Nos 14A 092,
14A 093, 14A 094, 14A 096, 15A 239,
15A 240, 15A 241, 15A 242, and 15A 243

For the Appellant:
Bernard J. Morello,
Pro Se

For the Appellee:
Jimmie Pinkham,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property consists of five parcels of agricultural property located in Douglas County, Nebraska that received special valuation for tax years 2014 and 2015. The legal descriptions and property record cards for the Subject Property are found in Exhibit 11 for Case No. 14A 092, Exhibit 12 for Case No. 15A 239, Exhibit 13 for case No. 14A 093, Exhibit 14 for Case No. 15A 240, Exhibit 15 for Case No. 14A 094, Exhibit 16 for Case No. 15A 241, Exhibit 17 for Case No. 14A 095, Exhibit 18 for Case No. 15A 242, Exhibit 19 for Case No. 14A 096, and Exhibit 20 for Case No. 15A 243.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case Nos. 14A 092 and 15A 0239, consisting of parcel number

0110540003, was \$351,370 for tax year 2014¹ and \$433,230 for tax year 2015.² Bernard J. Morello (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value was \$351,370 for tax year 2014³ and \$433,230 for tax year 2015.⁴

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 093 and 15A 0240, consisting of parcel number 0110890000, was \$310,850 for tax year 2014⁵ and \$397,970 for tax year 2015.⁶ The Taxpayer protested these assessments to the County Board. The County Board determined that the taxable value was \$310,850 for tax year 2014⁷ and \$397,970 for tax year 2015.⁸

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 094 and 15A 0241, consisting of parcel number 0113280006, was \$474,060 for tax year 2014⁹ and \$584,280 for tax year 2015.¹⁰ The Taxpayer protested these assessments to the County Board. The County Board determined that the taxable value was \$474,060 for tax year 2014¹¹ and \$584,280 for tax year 2015.¹²

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 095 and 15A 0242, consisting of parcel number 0113320000, was \$91,950 for tax year 2014¹³ and \$101,440 for tax year 2015.¹⁴ The Taxpayer protested these assessments to the County Board. The County Board determined that the taxable value was \$91,950 for tax year 2014¹⁵ and \$101,440 for tax year 2015.¹⁶

¹ E1.

² E2.

³ E1.

⁴ E2.

⁵ E3.

⁶ E4.

⁷ E3.

⁸ E4.

⁹ E5.

¹⁰ E6.

¹¹ E5.

¹² E6.

¹³ E7.

¹⁴ E8.

¹⁵ E7.

¹⁶ E8.

The County Assessor determined that the assessed value of the Subject Property in appeals 14A 096 and 15A 0243, consisting of parcel number 0114400002, was \$207,970 for tax year 2014¹⁷ and \$231,290 for tax year 2015.¹⁸ The Taxpayer protested these assessments to the County Board. The County Board determined that the taxable value was \$207,970 for tax year 2014¹⁹ and \$231,290 for tax year 2015.²⁰

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. The Commission ordered the consolidation of all five parcels for both tax years for purposes of the hearing. The Commission held a hearing on the merits of these appeals on November 22, 2016.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is *de novo*.²¹ 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."²²

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.²³

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

¹⁷ E9.

¹⁸ E10.

¹⁹ E9.

²⁰ E10.

²¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

²² *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

²³ *Id.*

arbitrary.²⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²⁵

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²⁶ 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.²⁷

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.”²⁸ 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.”²⁹

IV. VALUATION LAW

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.³⁰

“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

²⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁶ 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).

²⁷ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

²⁸ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁹ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

³⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”³¹ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”³² 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.³³ All real property in Nebraska subject to taxation shall be assessed as of January 1.³⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁵

“Agricultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses, shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application of such special valuation is filed and approved pursuant to section 77-1345.”³⁶ “Special valuation means the value that the land would have for agricultural and horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”³⁷ When determining the special value of real property the assessor must use sales of similar properties which are not subject to influences for purposes or uses other than agricultural or horticultural purposes.³⁸

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.³⁹ 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.⁴⁰

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”⁴¹

³¹ *Id.*

³² *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³³ Neb. Rev. Stat. §77-131 (Reissue 2009).

³⁴ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³⁶ Neb. Rev. Stat. §77-1343(1) (Reissue 2009).

³⁷ Neb. Rev. Stat. §77-1343(5) (Reissue 2009).

³⁸ 350 Neb. Admin. Code, ch. 11 §005.02 (03/09).

³⁹ Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

⁴⁰ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

⁴¹ Neb. Rev. Stat. §77-132 (Reissue 2009).

V. FINDINGS OF FACT

A. Summary of the Evidence

The County Assessor determined that all sales of agricultural land and horticultural land in Douglas County for tax years 2014 and 2015 were affected by the value of the properties for uses other than agricultural or horticultural uses.⁴² Therefore, the County Assessor determined the agricultural property in Douglas County should receive special valuation under Nebraska law. Nebraska law defines special valuation as “the value land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”⁴³ If real property qualifies for special valuation, the assessor is required to assess the real property at its special valuation, instead of its actual value.⁴⁴ It is undisputed that the Subject Property in the above captioned appeals was agricultural land and horticultural land which was qualified for special valuation.

The County Assessor valued the Subject Property at its special valuation using a methodology as contained in the Assessment Reports.⁴⁵ In both years, the County Assessor obtained sales data from sales of agricultural parcels located in other counties as provided by the Nebraska Department of Revenue, Property Assessment Division (the PAD). The methodology used for Douglas County agricultural properties is explained in a “Narrative Summary—Special Valuation” in each appeal.⁴⁶

Stan Mlotek, an employee of the Douglas County Assessor and a licensed residential appraiser,⁴⁷ testified on behalf of the County Board. Mr. Mlotek asserted that the County Assessor relied upon uninfluenced agricultural sales from counties other than Douglas County to determine the assessed values of the Subject Property. For purposes of clarity in these appeals, uninfluenced sales are sales where there are no influences on the sale other than agricultural influences. Mr. Mlotek testified that for both tax years these uninfluenced sales were provided to the County Assessor by the PAD.

⁴² See, E11:6, E12:12, E13:16, E14:12, E15:17, E16:13, E17:6, E18:12, and E20:12.

⁴³ Neb. Rev. Stat. §77-1343(5) (Reissue 2009).

⁴⁴ See, Neb. Rev. Stat. §77-1344(1) (Reissue 2009).

⁴⁵ See, E11:7, E12:10, E13:11, E14:10, E15:12, E16:11, E17:7, E18:10, E19:12, and E20:10.

⁴⁶ See, E11:6, E12:12, E13:16, E14:12, E15:17, E16:13, E17:6, E18:12, and E20:12.

⁴⁷ Mr. Mlotek testified that he also held the State Assessor Certificate, which is required of all County Assessors and Deputy County Assessors.

Mr. Mlotek stated that the County Assessor had not assigned different levels of valuation to the different land capability groups (LCGs).⁴⁸ Rather, all subclasses of grassland were valued the same, all subclasses of dryland were valued the same, and all subclasses of irrigated land were valued the same, without regard to the specific productivity of the land subclassification for both tax years 2014 and 2015.⁴⁹

Mr. Mlotek further testified that the County Assessor had determined that sales in Douglas County were not affected by whether or not real property was located within either a flood plain⁵⁰ or a flood way.⁵¹ He testified that almost all of the agricultural and horticultural real property in Douglas County was either in a flood plain or a flood way.

Mr. Mlotek also testified that when valuing agricultural land and horticultural land the County Assessor did not take into account crop prices or yields because both were variable.

Ason Okoruwa, a licensed certified general appraiser,⁵² testified that he equalized the Subject Property with other properties in the surrounding area and believed the Subject Property was valued too high. Okoruwa explained that he looked at the assessed values of surrounding properties, divided the value of the property by the amount of acres of the property, and came up with a per acre value for the particular property without regard to soil types or LCGs. Mr. Okoruwa gave opinions of value of each parcel based upon his analysis.

B. Analysis

The Commission is mindful that Nebraska law requires the County Assessor to undertake the difficult process of creating a theoretical market for agricultural land and horticultural land in Douglas County. The County Assessor must utilize the sales of uninfluenced agricultural land and horticultural land in surrounding counties in order to value Douglas County agricultural land

⁴⁸ “Land Capability Groups are groups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, 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.” 350 Neb. Admin. Code, ch. 14 §002.41 (03/15/09).

⁴⁹ Mr. Mlotek testified that beginning in tax year 2016, soil types were considered by the County Assessor when valuing subclasses of dryland, grassland, and irrigated land based upon the quality of the specific subclassification.

⁵⁰ Mr. Mlotek defined a flood plain as the agricultural land and horticultural land near rivers.

⁵¹ Mr. Mlotek defined a floodway as the agricultural land and horticultural land that was first to flood in a flood event.

⁵² Mr. Okaruwa’s credentials are listed at E29.

and horticultural land because all agricultural land and horticultural land in Douglas County has non-agricultural influences. The Commission also recognizes that “there is a presumption that the assessing official has performed his or her duties according to law.”⁵³

1. Flood Plain and Flood Way

The Taxpayer alleged that the value of the Subject Properties should be reduced because of their location in a flood plain or flood way. The Taxpayer did not, however, provide any data or opinions quantifying the impact of flood plain or floodway designations on the special value of agricultural land and horticultural land in Douglas County.

Additionally, no source of information quantifying this impact is available to the Commission in statutorily noticed sources. The Commission finds that there is insufficient evidence to determine whether flood plain or floodway designations in Douglas County influence the special valuation of agricultural land and horticultural land.

2. Mr. Okoruwa’s Methodology

The methodology used by Mr. Okoruwa is not recognized in appraisal literature. Rather than analyzing comparable sales, Mr. Okoruwa simply analyzed assessed values without regard to the comparability to the Subject Property in regard to LCGs. Therefore, the Commission gives little weight to Mr. Okoruwa’s opinions of value.

3. Uninfluenced Sales

Mr. Mlotek testified that the County Assessor only used uninfluenced sales from counties with comparable topography and geological characteristics. The uninfluenced sales utilized by the County Assessor for tax year 2014 were from Burt,⁵⁴ Cass, Dodge, Otoe, Saunders, and Washington Counties.⁵⁵ The uninfluenced sales utilized by the County Assessor for tax year

⁵³ See, *State ex rel. Bee Building Co. v. Savage*, 65 Neb. 714 (1902); *Woods v. Lincoln Gas & Electric Co.*, 74 Neb. 526 (1905); *Brown v. Douglas Co.*, 98 Neb. 299 (1915); *Gamboni v. County of Otoe*, 159 Neb. 417 (1954); *Ahern v. Board of Equalization*, 160 Neb. 709 (1955); *Collier v. Logan County*, 169 Neb. 1 (1959); *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415 (1965).

⁵⁴ For both tax years 2014 and 2015, Burt County had two market areas for agricultural land and horticultural land. The record does not indicate from which market area the uninfluenced sales from Burt County came from.

⁵⁵ See, E11:7, E13:11, E15:12, E17:7, and E19:12.

2015 were from Burt,⁵⁶ Cass, Otoe, Nemaha, Pawnee, Richardson, and Washington Counties.⁵⁷ This methodology would appear to be appropriate if uninfluenced sales in surrounding counties with comparable topography and geological characteristics were used to determine the value of Douglas County agricultural land and horticultural land.

However, as noted above, Mr. Mlotek testified that the County Assessor placed values on each subclassification of Douglas County agricultural land and horticultural land without regard to the specific productivity of the land within the subclassification. In other words, for each tax year, for each subclassification of grassland, dryland, and irrigated land, the assessed values were the same per acre regardless the LCGs within the subclassification. This is problematic.

The Commission notes that for tax year 2014 the County Assessor assessed all dryland at approximately \$4,350 per acre, and all grassland at \$2,400 per acre.⁵⁸ For tax year 2015, the County Assessor assessed all dryland at \$5,625 per acre, and all grassland at \$2,400 per acre.⁵⁹

Given that the County Assessor was required to use uninfluenced values from the surrounding counties listed above in order to determine the uninfluenced values for Douglas County, one would expect the Douglas County values to fall somewhere in the range of the values being utilized from the other counties. However, this is not the case at all with the subclassification grassland, as can be seen when reviewing the 2014 and 2015 Reports & Opinions of the Property Tax Administrator (R&O), for the relevant counties for both tax years,⁶⁰ as shown below.

2014 Grass	MA⁶¹									
LCG		1G1	1G	2G1	2G	3G1	3G	4G1	4G	Ave.⁶²
Burt	2	2192	2125	2422	1611	1898	1769	1816	1531	1832
Cass	54	1770	1770	1500	1500	1460	1460	1340	1340	1496
Dodge	1	1900	1956	1760	1832	1815	1650	1643	1477	1731
Otoe	8000	1682	1924	1669	1926	1815	1657	1488	1051	1607
Saunders	3	1715	1436	2307	1963	2029	1530	1443	1059	1698

⁵⁶ For both tax years 2014 and 2015, Burt County had two market areas for agricultural land and horticultural land. The record does not indicate from which market area the uninfluenced sales from Burt County came from.

⁵⁷ See, E12:10, E14:10, E16:11, E18:10, and E20:10.

⁵⁸ See, 2014 R&O, Douglas County. See also, E11.3; E13.3; 15.3; E17.3, and E19:2.

⁵⁹ See, 2015 R&O, Douglas County. See also, E12.3; E14.3; 16.2; E18.3, and E20:3.

⁶⁰ See, 2014 R&O, Douglas County, at

https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/2014_exhibit_list/28Douglas.pdf, 2015 R&O, Douglas County, at https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/2015_exhibit_list/28Douglas.pdf, and 2015 R&O, Nemaha County, at https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/2015_exhibit_list/64Nemaha.pdf.

⁶¹ MA is the market area, as assigned by the County Assessor.

⁶² This is the weighted average, taken from the 2014 R&O, Douglas County.

2014 Grass	MA⁶¹									
LCG		1G1	1G	2G1	2G	3G1	3G	4G1	4G	Ave.⁶²
Washington	1	2162	2149	1947	1545	3214	1526	1759	1525	1844
Median⁶³		1835	1940	1854	1722	1857	1590	1566	1409	1669
Douglas		2400	2400	2400	2400	2400	2400	2400	2400	2400

2015 Grass	MA⁶⁴									
LCG		1G1	1G	2G1	2G	3G1	3G	4G1	4G	Ave.⁶⁵
Burt	1	2723	2648	2610	2190	2243	2271	2193	1822	2201
Cass	1	2250	2198	2089	2020	1956	1964	1685	1434	1763
Nemaha	8300	1261	1608	1401	1630	2079	1450	1539	1050	1401
Otoe	8000	1728	1955	1718	1994	1853	1747	1648	1212	1703
Pawnee	1	1872	2076	1429	1890	1608	1564	1707	1437	1667
Richardson	50	1297	1469	1146	1385	1391	1302	1236	983	1222
Washington	1	2120	1900	1735	1545	1520	1366	1301	1202	1511
Median⁶⁶		1872	1955	1718	1890	1853	1564	1648	1212	1667
Douglas		2400	2400	2400	2400	2400	2400	2400	2400	2400

As demonstrated by the average acre value comparisons in the charts above, Douglas County valued its grassland in all LCGs at values far exceeding the values of the uninfluenced sales from all of the other counties where sales were utilized. Nothing in the record explains why it would be reasonable for Douglas County to assign a special valuation to all categories of its grassland at \$2,400 per acre when the uninfluenced grass sales from the surrounding counties were consistently far below \$2,400 per acre. Therefore, we find that it was unreasonable for the County Board to rely upon the special valuations that were based upon the methodology used by the County Assessor.

In order to determine the special valuations of the Subject Property, the Commission has analyzed the relevant R&O and completed analyses similar to the analysis above for both grassland and dryland⁶⁷ as applicable to the Subject Property.⁶⁸ Within that analysis, the Commission has first adjusted values for each LCG for each respective surrounding county for both tax years to 100% of actual value, and then, since Douglas County assessed all agricultural

⁶³ The Commission calculated the medians in this row based upon the values in the six counties in the same column.

⁶⁴ MA is the market area, as assigned by the County Assessor.

⁶⁵ This is the weighted average, taken from the 2015 R&O, Douglas County and 2015 R&O, Nemaha County.

⁶⁶ The Commission calculated the medians in this row based upon the values in the seven counties in the same column.

⁶⁷ The Subject Property had no irrigated land.

⁶⁸ The Commission limits its analysis to dryland and grassland, and will not comment on the County Assessor's methodology in regard to irrigated land, because none of the Subject Property contains any irrigated land.

land and horticultural land at 75% of actual value, a further adjustment to each surrounding county's values was made to 75% of actual value, as demonstrated in the charts below.

2014 Grass	1G	2G1	2G	3G1	3G	4G1	4G
Burt - 69% ⁶⁹	2125	2422	1611	1898	1769	1816	1531
Burt - 100%	3080	3510	2335	2751	2564	2632	2219
Cass - 69% ⁷⁰	1770	1500	1500	1460	1460	1340	1340
Cass - 100%	2565	2174	2174	2116	2116	1942	1942
Dodge - 74% ⁷¹	1956	1760	1832	1815	1650	1643	1477
Dodge 100%	2643	2378	2476	2453	2230	2220	1996
Otoe - 71% ⁷²	1924	1669	1926	1815	1657	1488	1051
Otoe - 100%	2710	2351	2713	2556	2334	2096	1480
Saunders - 70% ⁷³	1436	2307	1963	2029	1530	1443	1059
Saunders - 100%	2051	3296	2804	2899	2186	2061	1513
Washington - 73% ⁷⁴	2149	1947	1545	3214	1526	1759	1525
Washington - 100%	2944	2667	2116	4403	2090	2410	2089
Median @ 100%	2677	2523	2406	2654	2208	2158	1969
Median @ 75%	2007	1892	1804	1990	1656	1619	1477
Douglas @ 75%	2400	2400	2400	2400	2400	2400	2400

2015 Grass	1G1	1G	2G1	2G	3G1	3G	4G1	4G
Burt - 70% ⁷⁵	2723	2648	2610	2190	2243	2271	2193	1822
Burt - 100%	3890	3783	3729	3129	3204	3244	3133	2603
Cass - 70% ⁷⁶	2250	2198	2089	2020	1956	1964	1685	1434
Cass - 100%	3214	3140	2984	2886	2794	2806	2407	2049
Nemaha - 70% ⁷⁷	1261	1608	1401	1630	2079	1450	1539	1050
Nemaha - 100%	1801	2297	2001	2329	2970	2071	2199	1500
Otoe - 71% ⁷⁸	1728	1955	1718	1994	1853	1747	1648	1212
Otoe - 100%	2434	2754	2420	2808	2610	2461	2321	1707
Pawnee - 71% ⁷⁹	1872	2076	1429	1890	1608	1564	1707	1437
Pawnee - 100%	2637	2924	2013	2662	2265	2203	2404	2024

⁶⁹ See, 2014 R&O, Burt County, page 31.

⁷⁰ See, 2014 R&O, Cass County, page 6.

⁷¹ See, 2014 R&O Dodge County, page 6.

⁷² See, 2014 R&O Otoe County, page 6.

⁷³ See, 2014 R&O Saunders County, page 6.

⁷⁴ See, 2014 R&O Washington County, page 6.

⁷⁵ See, 2015 R&O, Burt County, page 6.

⁷⁶ See, 2015 R&O, Cass County, page 6.

⁷⁷ See, 2015 R&O, Nemaha County, page 6.

⁷⁸ See, 2015 R&O Otoe County, page 6.

⁷⁹ See, 2015 R&O Pawnee County, page 6.

2015 Grass	1G1	1G	2G1	2G	3G1	3G	4G1	4G
Richardson - 70% ⁸⁰	1297	1469	1146	1385	1391	1302	1236	983
Richardson - 100%	1853	2099	1637	1979	1987	1860	1766	1404
Washington - 60% ⁸¹	2120	1900	1735	1545	1520	1366	1301	1202
Washington - 100%	3533	3167	2892	2575	2533	2277	2168	2003
Median @ 100%	2637	2924	2420	2662	2610	2277	2321	2003
Median @ 75%	1978	2193	1815	1997	1958	1708	1741	1502
Douglas @ 75%	2400	2400	2400	2400	2400	2400	2400	2400

2014 Dry	1D1	1D	2D1	2D	3D1	3D	4D1	4D
Burt - 69% ⁸²	5350	5325	4850	4675	4442	4424	3550	2725
Burt - 100%	7754	7717	7029	6775	6438	6412	5145	3949
Cass - 69% ⁸³	4340	4300	4130	3720	3550	3550	3560	2980
Cass - 100%	6290	6232	5986	5391	5145	5145	5159	4319
Dodge - 74% ⁸⁴	5360	5300	5270	5100	4500	4440	4025	3550
Dodge 100%	7243	7162	7122	6892	6081	6000	5439	4797
Otoe - 71% ⁸⁵	4100	4100	3900	3600	3300	3200	3000	2700
Otoe - 100%	5775	5775	5493	5070	4648	4507	4225	3803
Saunders - 70% ⁸⁶	5315	5108	4918	4560	4409	4112	3265	3065
Saunders - 100%	7593	7297	7026	6514	6299	5874	4664	4379
Washington - 73% ⁸⁷	5230	5135	4830	4185	3925	3850	2965	2235
Washington - 100%	7164	7034	6616	5733	5377	5274	4062	3062
Median @ 100%	7204	7098	6821	6124	5729	5574	4905	4134
Median @ 75%	5403	5324	5116	4593	4297	4181	3678	3101
Douglas @ 75%	4346	4348	4350	4350	4350	4347	4348	4350

2015 Dry	1D1	1D	2D1	2D	3D1	3D	4D1	4D
Burt - 70% ⁸⁸	6500	6145	5655	5460	4599	4600	4175	3175
Burt - 100%	9286	8779	8079	7800	6570	6571	5964	4536
Cass - 70% ⁸⁹	5293	5149	5025	4648	4235	4549	4409	3841
Cass - 100%	7561	7356	7179	6640	6050	6499	6299	5487

⁸⁰ See, 2015 R&O Richardson County, page 6.

⁸¹ See, 2015 R&O Washington County, page 33.

⁸² See, 2014 R&O, Burt County, page 31.

⁸³ See, 2014 R&O, Cass County, page 6.

⁸⁴ See, 2014 R&O Dodge County, page 6.

⁸⁵ See, 2014 R&O Otoe County, page 6.

⁸⁶ See, 2014 R&O Saunders County, page 6.

⁸⁷ See, 2014 R&O Washington County, page 6.

⁸⁸ See, 2015 R&O, Burt County, page 6.

⁸⁹ See, 2015 R&O, Cass County, page 6.

2015 Dry	1D1	1D	2D1	2D	3D1	3D	4D1	4D
Nemaha - 70% ⁹⁰	4734	4600	4299	4100	3800	3600	2850	2600
Nemaha - 100%	6763	6571	6141	5857	5429	5143	4071	3714
Otoe - 71% ⁹¹	4600	4600	4350	4200	4150	3900	3500	3000
Otoe - 100%	6479	6479	6127	5915	5845	5493	4930	4225
Pawnee - 71% ⁹²	3700	3700	3275	3200	2600	2540	2400	2100
Pawnee - 100%	5211	5211	4613	4507	3662	3577	3380	2958
Richardson 70% ⁹³	4541	4450	4123	4089	3942	3850	2831	2690
Richardson - 100%	6487	6357	5890	5841	5631	5500	4044	3843
Washington - 60% ⁹⁴	6015	5904	5555	5230	4905	4815	3855	2912
Washington - 100%	10025	9840	9258	8717	8175	8025	6425	4853
Median @ 100%	6763	6571	6141	5915	5845	5500	4930	4225
Median @ 75%	5072	4928	4606	4436	4384	4125	3698	3169
Douglas @ 75%	5625	5625	5625	5625	5625	5624	5625	5625

In each of the four charts above, the “Median @ 75%” represents the median of the uninfluenced sales in each LCG from each of the counties used to determine the special valuation of the influenced agricultural land and horticultural land in Douglas County.⁹⁵ As noted above, one would expect the Douglas County special valuation for each LCG to fall within the range of the uninfluenced sales from the surrounding counties. A simple comparison of the “Median @ 75%” and the “Douglas @ 75%” indicates that Douglas County set its special valuation values at amounts far exceeding the median of the surrounding counties in every Grassland LCG for both tax years, in four of eight Dryland LCGs in tax year 2014, and in all eight Dryland LCGs in tax year 2015. We therefore find that the special valuation determinations of the Grassland and Dryland in Douglas County, as applied to the valuations of the Subject Property were unreasonable.

Therefore, in order to appropriately determine the special valuation of the Subject Property, the Commission has applied the “Median @ 75%” value as shown in the charts above to every LCG of the Subject Property as applicable. All other LCGs in the property record cards of the

⁹⁰ See, 2015 R&O, Nemaha County, page 6.

⁹¹ See, 2015 R&O Otoe County, page 6.

⁹² See, 2015 R&O Pawnee County, page 6.

⁹³ See, 2015 R&O Richardson County, page 6.

⁹⁴ See, 2015 R&O Washington County, page 33.

⁹⁵ The Commission notes that the charts above are demonstrative of more LCGs than are existent on the Subject Property. The adjustments made in this Decision and Order use only the data relating to the LCGs present on the Subject Property.

Subject Property were not affected by the analysis above and were not adjusted by the Commission.⁹⁶

VI. CONCLUSIONS OF LAW

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations for Case Nos. 14A 092, 14A 093, 14A 094, 14A 096, 15A 0239, 15A 0240, 15A 0241, 15A 0242, and 15A 0243, but there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination for Case No. 14A 095.

The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable for Case Nos. 14A 092, 14A 093, 14A 094, 14A 096, 15A 0239, 15A 0240, 15A 0241, 15A 0242, and 15A 0243, but there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable for Case No. 14A 095.

Therefore, the Decisions of the County Board for Case Nos. 14A 092, 14A 093, 14A 094, 14A 096, 15A 0239, 15A 0240, 15A 0241, 15A 0242, and 15A 0243 should be vacated and reversed, and the Decision of the County Board for Case No. 14A 095 should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 14A 092, 14A 093, 14A 094, 14A 096, 15A 0239, 15A 0240, 15A 0241, 15A 0242, and 15A 0243 are reversed.⁹⁷
2. The Decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for Case No. 14A 095 is affirmed.

⁹⁶ For example, the Commission did not adjust any of the Subject Property subclassifications involving treed acres, including 1gt1, 2gt, 2gt1, 3gt, or 4gt as there was no evidence in the record regarding these subclassifications.

⁹⁷ Taxable 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 at the protest proceeding.

3. The special valuations of the Subject Property for tax year 2014 are:

14A 092	\$340,216
14A 093	\$296,897
14A 094	\$469,270
14A 095	\$ 91,950
14A 096	\$202,700

4. The special valuations of the Subject Property for tax year 2015 are:

15A 0239	\$338,172
15A 0240	\$296,586
15A 0241	\$403,729
15A 0242	\$ 96,466
15A 0243	\$197,988

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

7. Each party is to bear its own costs in this proceeding.

8. This Decision and Order shall only be applicable to tax years 2014 and 2015.

9. This Decision and Order is effective for purposes of appeal on February 3, 2017.⁹⁸

Signed and Sealed: February 3, 2017

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁹⁸ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2010 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.