

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Corn Processing, LLC,
Appellant,

v.

Furnas County Board of Equalization,
Appellee.

Case Nos: 14C 218, 14C 219,
14C 220, 14C 221, & 14C 222

Decision and Order Reversing the
Decisions of the Furnas County
Board of Equalization

For the Appellant:

Frederick D. Stehlik & David Nelson,
Gross & Welch, PC, LLO

For the Appellee:

Thomas P. Patterson
Furnas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of five commercial parcels located in Furnas County, Nebraska. A 66.39 acre parcel in Case No. 14C 218 is improved with an ethanol plant, built in 2008. A 78 acre parcel in Case No. 14C 219 is improved with a lagoon. Each of the three .06 acre parcels in Case Nos 14C 220, 14C 221, and 14C 222 have irrigation wells. The legal descriptions of the parcels are found at Exhibits 1 to 5. The property record cards for the Subject Property are found at Exhibits 7 to 11.

II. PROCEDURAL HISTORY

In Case No. 14C 218, the Furnas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$11,113,950 for tax year 2014.¹ Nebraska Corn Processing, LLC (NCP) protested this assessment to the Furnas County Board of Equalization

¹ The County Assessor valued the land component of the Subject Property at \$274,290 and the buildings component of value at \$10,839,660.

(the County Board) and requested an assessed valuation of \$5,600,000. The County Board determined that the taxable value of the Subject Property for tax year 2014 was \$11,113,950.²

The County Assessor determined that the assessed value of the Subject Property in Case No. 14C 219 was \$823,000 for tax year 2014.³ NCP protested this assessment to the County Board and requested an assessed valuation of \$270,040. The County Board determined that the taxable value of the Subject Property in Case No. 14C 219 for tax year 2014 was \$823,000.⁴

The County Assessor determined that the assessed value of the Subject Property in Case No. 14C 220 was \$213,335 for tax year 2014. NCP protested this assessment to the County Board and requested an assessed valuation of \$165. The County Board determined that the taxable value of the Subject Property in Case No. 14C 220 for tax year 2014 was \$213,335.⁵

In Case No. 14C 221, the County Assessor determined that the assessed value of the Subject Property was \$213,335 for tax year 2014. NCP protested this assessment to the County Board and requested an assessed valuation of \$65. The County Board determined that the taxable value of the Subject Property in Case No. 14C 221 for tax year 2014 was \$213,335.⁶

The County Assessor determined that the assessed value of the Subject Property in Case No. 14C 222 was \$213,335 for tax year 2014. NCP protested this assessment to the County Board and requested an assessed valuation of \$65. The County Board determined that the taxable value of the Subject Property in Case No. 14C 222 for tax year 2014 was \$213,335.⁷

NCP appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a consolidated hearing on August 4, 2015.

² Exhibit 1.

³ The County Assessor valued the land component of the Subject Property at \$303,000 and the buildings component of value at \$520,000.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁸ 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."⁹

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.¹⁰

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.¹¹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹²

During appeals from a determination of the County Board, there is both a presumption in favor of the County Board and a burden of persuasion placed upon an appealing party.¹³ The presumption in favor of the County Board, and the burden of persuasion cannot be conflated, and require separate analysis.¹⁴ Both the presumption and burden of persuasion relate to the determinations of the County Board.¹⁵

The presumption is:

⁸ 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).

⁹ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁰ *Id.*

¹¹ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

¹² *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ See generally, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

¹⁴ See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 125-126, 825 N.W.2d 447, 452-453 (2013).

¹⁵ See generally, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 125-126, 825 N.W.2d 447, 452-453 (2013).

[T]hat a board of equalization has faithfully preformed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. 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.¹⁶

Competent evidence is defined as relevant and material evidence or that evidence “which the very nature of the thing to be proven requires.”¹⁷ The Nebraska Supreme Court has held that, “when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.”¹⁸

If it has been determined that the presumption in favor of the County Board’s determination is rebutted, the reasonableness of the County Board’s determination of value based upon the evidence in the appeals is a question of fact.¹⁹ The Taxpayer has the burden to show that the valuation determination by the County Board was unreasonable or arbitrary.²⁰ This burden is only met by clear and convincing evidence.²¹ Where clear and convincing evidence shows that the County Board’s determination was arbitrary or unreasonable, the Taxpayer is entitled to relief.²²

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²³ 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.²⁴

¹⁶ See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124, 825 N.W.2d 447, 451-452 (2013) (citing *US Ecology v. Boyd Cty. Bd of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999) and *Schmidt v. Thayer Cty. Bd. Of Equal.*, 10 Neb.App. 10, 624 N.W.2d 63 (2001)).

¹⁷ *Black’s Law Dictionary 6th Edition*, West Group, p. 284 (1990).

¹⁸ *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 126, 825 N.W.2d 447, 453 (2013) (citations omitted).

¹⁹ See, Neb. Rev. Stat. 77-5016(9) (Cum. Supp. 2012); See also, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124-125, 825 N.W.2d 447, 451-452 (2013).

²⁰ See, Neb. Rev. Stat. 77-5016(9) (Cum. Supp. 2012); See also, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124-125, 825 N.W.2d 447, 451-452 (2013).

²¹ See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124-125, 825 N.W.2d 447, 451-452 (2013).

²² Neb. Rev. Stat. § 5016(9) (Reissue 2009).

²³ 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).

²⁴ *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.”²⁵ 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.”²⁶ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²⁷

IV. FEE APPRAISAL

Joseph Calvanico conducted an appraisal on behalf of NCP and certified that it was performed according to professional appraisal standards. The Commission finds that the appraisal constitutes competent and relevant evidence concerning the County Board’s determinations. The Commission, therefore, finds that the presumption in favor of the County Board’s determination is rebutted.²⁸

V. 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.²⁹

“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

²⁵ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

²⁶ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

²⁷ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

²⁸ *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 126, 825 N.W.2d 447, 453 (2013) (citations omitted).

²⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”³⁰ “Actual value, market value, and fair market value mean exactly the same thing.”³¹ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. §77-201 and has the same meaning as assessed value.³² All real property in Nebraska subject to taxation shall be assessed as of January 1.³³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁴

Real property is defined as:

(1) All land;

(2) All buildings, improvements, and fixtures, except trade fixtures;

...³⁵

Agency regulations that are properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law.”³⁶ Pursuant to its statutory authority to promulgate Rules and Regulations, the Nebraska Department of Revenue has defined the terms “building,” “improvement,” and “fixture.” A “building” is defined as, “a structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education and the like. A structure or edifice enclosing a space within its walls, and usually, but not necessarily, covered with a roof.”³⁷ An “improvement” is defined as, “any addition made to real property, amounting to more than mere repairs, such as sidewalks, streets, sewers or utilities.”³⁸ “Fixtures other than trade fixtures” are defined as

any item of property that is: annexed or physically attached to or incorporated into the real property; appropriated to the use of the real property to which it is annexed. If the property is a necessary or useful adjunct to the real property to which it is annexed, then it has been appropriated to the use or purpose of the real property; and intended to be annexed to the real property. Intention shall be inferred from the nature and extent of the annexation and

³⁰ *Id.*

³¹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³² Neb. Rev. Stat. §77-131 (Reissue 2009).

³³ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³⁴ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³⁵ Neb. Rev. Stat. § 77-103 (Reissue 2009).

³⁶ *Smalley v. Nebraska Department of Health and Human Services*, 283 Neb. 544, 557, 811 N.W.2d 246, 256 (2012).

³⁷ 350 Neb. Admin. Chapter 10 §001.01B (Rev. 3/15/09).

³⁸ *Id.* at §001.01C.

appropriation, unless the owner of the item or the owner of the real property provides documentation that the intention is otherwise.³⁹

Tangible personal property is a distinct class of property.⁴⁰ The test for determining whether property qualifies as tangible personal property for ad valorem tax purposes is contained in Nebraska Statute §77-105.⁴¹

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased....⁴²

We are not aware of any Nebraska court decisions defining machinery or equipment, nor have any applicable Rules and Regulations been adopted defining machinery or equipment in the context of ad valorem taxes. Under these circumstances, the Commission will interpret the statutes under general principles of statutory construction.⁴³

Machinery is defined as “a functional unit of the means and appliances by which a desired result is obtained.”⁴⁴ A machine is also defined as “an assemblage of parts that are usu[ally] solid bodies but include in some cases fluid bodies or electricity in conductors and that transmit forces, motion and energy one to another in some predetermined manner and to some desired end. An instrument or a lever designed to transmit or modify the application of power, force, or

³⁹ *Id.* at §001.01A.

⁴⁰ Neb. Rev. Stat. §77-201(5) (Reissue 2009).

⁴¹ *Vandenberg v. Butler County Board of Equalization*, 796 N.W.2d 580, 584, 281 Neb. 437, 442 (2011). For ad valorem tax purposes, the *Northern Natural Gas* test has been overruled. In *Vandenberg*, the Court reviewed the statutory definition of trade fixtures and held that for ad valorem tax purposes the statutory definition found in Neb. Rev. Stat. §77-105 controlled. The Taxpayer appealed a determination by the County Assessor that an irrigation pump located on a parcel of leased farm land and attached to a case well with a cement cap and bolts, was personal property. The Court stated that the issue in *Vandenberg* was whether the irrigation pump was a fixture and real property or a trade fixture and personal property. The Court held that Neb. Rev. Stat. §77-103 defined all fixtures as real property, while Neb. Rev. Stat. §77-105 defined all trade fixtures as personal property. (“While §77-103 provides that “fixtures” shall be taxed as real property, “trade fixtures” are taxable as personal property under §77-105”). While the Court held that the Commission had correctly determined that the irrigation pump was machinery as described in Neb. Rev. Stat. §77-105, the Court did not provide a definition of machinery or equipment. The Court held that Neb. Rev. Stat. §77-105 includes all trade fixtures in the definition of personal property.

⁴² Neb. Rev. Stat. 77-105 (Reissue 2009).

⁴³ In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning. *Blaser v. County of Madison*, 285 Neb. 290, N.W.2d (2013) (citing *Bridgeport Ethanol v. Nebraska Dept. of Rev.*, 284 Neb. 291, 818 N.W.2d 600 (2012)). “Statutes relating to the same subject, although enacted at different times, are in pari materia and should be construed together.” *Mahnke v. State*, 276 Neb. 57, 751 N.W.2d 635 (2008). There is a “presumption that the Legislature intended a sensible rather than absurd result in enacting the statute.” *State v. Norman*, 282 Neb. 990, 997 (2012) (citations omitted). This requires a sensible construction that would effectuate the purpose of the statute instead of a literal meaning that would have the effect of defeating the legislative intent. *State v. Norman*, 282 Neb. 990, 997 (2012) (citations omitted).

⁴⁴ *Webster’s Third New International Dictionary*, Merriam Webster, Inc., 1354 (2002). The Commission’s Rules and Regulations give it the authority to consider and utilize *Webster’s Third New International Dictionary*. See NAC Title 442, Chapter 5, §031.03.

motion.”⁴⁵ Equipment is defined as “the physical resources serving to equip a person or thing (1): the implements (as machinery or tools) used in an operation or activity (2): all of the fixed assets other than land and buildings of a business enterprise.”⁴⁶

VI. FINDINGS OF FACT

A. Real Property Versus Personal Property

In the hearing, the parties contested whether certain items of tangible property constituted real or personal property. Specifically, the parties contested whether the Pump House constituted real property.⁴⁷ The Pump House consists of a concrete slab with walls, a roof, and double doors surrounding a diesel water pump that can be used to supply water to sprinkler systems throughout the ethanol plant in the event that a fire were to occur. Testimony indicated that the diesel pump was installed on the concrete slab and that the walls, doors, and roof were then constructed to surround the diesel pump. The purpose of the walls, door, and roof are to protect the pump from the elements. Individuals must enter through the double doors to gain access to the diesel pump located inside.

NCP asserted that a concrete slab, walls, roof and door constituted a mere housing for the diesel pump. Further, it asserted that the Pump House had been included in NCP’s personal property tax returns and that the assessment of the Pump House as real property would constitute a double taxation of the Pump House. Joseph Calvanico, a Certified General appraiser who was retained to appraise the Subject Property for the Taxpayer, testified that he did not appraise the Pump House because it was included on NCP’s personal property returns. When questioned, Mr. Calvanico testified that but for NCP’s personal property returns he would have appraised the Pump House as real property. Bryan Hill, an employee of the Property Assessment Division of the Nebraska Department of Revenue, who was retained by the County to assess the Subject Property, classified the Pump House as real property in his assessment and derived a taxable value for the Pump House. Neither party supplied the personal property tax returns for the Subject Property.

⁴⁵ *Webster’s Third New International Dictionary*, at 1353.

⁴⁶ *Id.*

⁴⁷ See, Exhibit 12:29.

Under Nebraska law, a building constitutes real property and is defined as, “a structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education and the like. A structure or edifice enclosing a space within its walls, and usually, but not necessarily, covered with a roof.”⁴⁸ The testimony in the hearing indicates that the Pump House was constructed for the purpose of sheltering the diesel water pump from the elements. The diesel water pump and interior space is surrounded by walls with a concrete slab floor and topped with a roof. Access to the diesel water pump is accomplished by walking through double doors in one of the walls, unlike the housings on most machines, which are removed to gain access to the machine or equipment.

The Commission therefore determines that the factors listed in the previous paragraph indicate the Pump House is a building and is real property under Nebraska law. All real property in Nebraska subject to taxation shall be assessed as of January 1.⁴⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁵⁰

Concerning NCP’s assertion that the assessment of the Pump House as real property would constitute a double taxation of the Pump House, the Commission notes that accuracy of personal property tax schedules are the responsibility of the taxpayer or its legal representative.⁵¹ Nebraska Statutes also place affirmative duties on the county assessors in regard to personal property tax returns. County Assessors are required to “carefully examine, check, and verify all taxable tangible personal property tax returns.” County assessors are also permitted to investigate, examine or inspect property listed on the returns “to determine that all taxable tangible personal property of the taxpayer is listed for taxation at its net book value.”⁵²

It is important to note that the personal property tax return completed by NCP and required to be reviewed by the County Assessor is not in evidence in these cases. The Commission is unable to confirm that the Pump House was included in the personal property return, and likewise unable to evaluate whether the County Assessor completed the statutory duty. Additionally, the

⁴⁸ 350 Neb. Admin. Chapter 10 §001.01B (Rev. 3/15/09).

⁴⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

⁵⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

⁵¹ See, Neb. Rev. Stat. §77-1201 (Reissue 2009); Neb. Rev. Stat. §77-1229 (Reissue 2009).

⁵² Neb. Rev. Stat. §77-1233.02 (Reissue 2009).

Commission notes that NCP likely filed the personal property tax return after the assessment of the real property. Personal property tax returns must be filed on or before May 1 of each year.⁵³ The County Assessor is required to make an assessment roll of all taxable real property by March 19 of each year.⁵⁴ Once the assessed values of real property are determined by March 19, the County Assessor may not change the assessed values without a determination of the County Board or the Commission.⁵⁵

Finally, NCP's argument is characterized as an assertion that the taxation of its personal property was excessive because it included items of real property. Nebraska statutes establish a process for appealing the taxable value of personal property and inclusion or exclusion of items found on a personal property tax return. There is no indication in the record that NCP followed these procedures and, therefore, the Commission lacks jurisdiction to determine NCP's personal property tax obligation.⁵⁶

The Commission therefore finds that the actual value of the Pump House should be included in the total taxable value of the Subject Property.

B. County Assessor & County Board Determinations

In order to assess nine different parcels owned by NCP for tax year 2014, the County Board entered into a contractual agreement on behalf of the County Assessor with the Nebraska Department of Revenue (the Department).⁵⁷ Pursuant to such agreement, the Board contracted with the Department to utilize a Department appraiser to reappraise the NCP property. Bryan Hill, a Department employee, was selected to perform the appraisal. Mr. Hill inspected the Subject Property on January 10, 2014 and February 28, 2014.⁵⁸ A "Summary Appraisal Report" was completed by Mr. Hill, with opinions of value as of the effective date of January 1, 2014.⁵⁹ Mr. Hill testified that he had been a Certified Residential Appraiser since 2009 but that he held no license regarding commercial appraisals. He also testified that he had no prior experience in

⁵³ See, Neb. Rev. Stat. §77-1229 (Reissue 2009).

⁵⁴ See, Neb. Rev. Stat. §77-1303 (2014 Cum. Supp.).

⁵⁵ Cite Neb. Rev. Stat. §77-1507, Neb. Rev. Stat. §77-5027, Neb. Rev. Stat. 77-1502.

⁵⁶ See, Neb. Rev. Stat. §77-1233.06

⁵⁷ Exhibit 16:1. The terms of the contract were to provide "a complete appraisal in accordance with professionally accepted mass appraisal standards," and the Department agreed to provide "a written appraisal report for the commercial properties."

⁵⁸ Exhibit 12:3.

⁵⁹ Exhibit 12.

assessing or appraising Ethanol Plants. Mr. Hill further stated that the appraisal report he prepared did not comply with all of the standards of the Uniform Standards of Professional Appraisal Practice (USPAP). However, the Appellee contends that Mr. Hill's appraisal is acceptable for purposes of these appeals due to jurisdictional exceptions granted to Department employees by statute.⁶⁰

Mr. Hill utilized the cost approach to reach a value opinion for the improvements on the parcels in Case Nos. 14C 218 and 14C 219. He utilized a sales comparison approach when valuing the land for each of the five parcels in 14C 218, 14C 219, 14C 220, 14C 221, and 14C 222. Four of the parcels included in Mr. Hill's appraisal were not appealed by NCP.

The County Assessor, Melody Crawford, testified that she utilized Mr. Hill's Summary Appraisal Report to assess each of the five parcels and that she agreed with his value opinion for each parcel. The County Board also agreed with the values stated in the Summary Appraisal Report prepared by Mr. Hill.

C. Appraisal Report Offered by NCP

NCP engaged Mr. Calvanico to appraise the Subject Property for tax year 2014. Mr. Calvanico testified that he was a Certified General Appraiser.⁶¹ He stated that he had inspected the Subject Property on July 13-14, 2010, for a previous appraisal assignment. Mr. Calvanico used the cost approach to reach a value opinion for the improvements on the parcels in Case Nos. 14C 218 and 14C 219, and he used a sales comparison approach when valuing the land for each of the five parcels in 14C 218, 14C 219, 14C 220, 14C 221, and 14C 222.

D. Valuation of the Land

1. Size of Parcels

In determining the reasonableness of the County Board's assessed land value the Commission's analysis is hindered by a limited and imperfect record. Concerning the parcel improved with the ethanol plant the property record cards,⁶² Mr. Hill's appraisal,⁶³ and Mr.

⁶⁰ See, *Neb. Rev. Stat.* §76-2221(1)(b).

⁶¹ Calvanico's appraisal credentials are listed at Exhibit 18.

⁶² See, E11:1.

⁶³ See, E12:24, 38.

Calvanico's appraisal disagree on the size of the parcel.⁶⁴ The property record card indicates an area of 66.39 acres, but includes an assessed value for the land that is based upon Mr. Hill's assessment report using 68.43 acres.⁶⁵ Ms. Crawford testified that she did not complete an independent assessment, but relied upon Mr. Hill's summary appraisal report. Mr. Hill's report indicates an area of 68.43 acres on one page,⁶⁶ 66.39 acres on another,⁶⁷ and his total opinion of actual value for the land is based on 68.43 acres.⁶⁸ Mr. Hill testified that the property record cards had incorrect acre totals. He asserted that the 71.76 acres found in Exhibit 12, page 40 included the Plant Parcel and four parcels not appealed. Finally, Mr. Calvanico's appraisal report indicates an area of 68.43 acres,⁶⁹ lists a total of 146.61 acres, including the parcel at 68.43 acres,⁷⁰ and states two separate land value conclusions based on \$2,200 per acre (one that could be supported by multiplying the total acres including the parcel at 68.43 acres by \$2,200 per acre and then rounding,⁷¹ and another that could not be supported by that equation).⁷² Mr. Calvanico testified that Exhibit 15, page 19 depicts the Plant Parcel.

The Commission finds that the area of the Plant Parcel is 68.43 acres. Both Mr. Calvanico and Mr. Hill utilized the 68.43 acres in their determinations of the land value. Moreover, Ms. Crawford testified that she relied entirely on Mr. Hill's summary appraisal report to determine the assessed value of the Subject Property, and Mr. Hill asserted that the property record cards are incorrect.

There was no dispute about the area of the remaining four parcels: (1) Lagoon Parcel 78 acres;⁷³ (2) Well Parcel .06 acres;⁷⁴ (3) Well Parcel .06 acres;⁷⁵ and (4) Well Parcel .06 acres.⁷⁶

⁶⁴ See, E15:4,14, 28, and 48.

⁶⁵ See, E11:1(1 acre x \$45,000) + (9 acres x \$6,000) + (58.43 acres x \$3,000) = \$274,290.

⁶⁶ See, E12:24.

⁶⁷ See, E12:38.

⁶⁸ Hill's assessment report indicates a value of \$284,280 for the Plant Parcel and the Buffer Lots totaling 71.76 acres. See, E12:40. Once the Plant Parcel at 68.43 acres is removed from the total there are 3.33 acres left. Hill's assessment report at E12:24 lists the area of all buffer lots. The aggregate area of all buffer lots equals 3.33 acres. 2.18 acres (Tract 3) + .31 acres (Tract 4) + .39 acres (Tract 5) + .45 acres (Tract 6) = 3.33 acres.

⁶⁹ See, E15:14, 28, and 30.

⁷⁰ See, E15:4.

⁷¹ See, E15:48. Calvanico lists the land value at \$325,000. The following equation indicates the unrounded value of total acres including the Plant Parcel at 68.43 acres: 68.43 acres (Plant Parcel) + 78 acres (Lagoon Parcel) + .06 (Well Parcel) + .06 (Well Parcel) + .06 (Well Parcel) = 146.61 acres x \$2,200 = \$322,542. \$322,542 could round to \$325,000.

⁷² See, E15:4. Calvanico lists a land value at \$321,200. The total value of all land including the Plant Parcel at 68.43 acres, where each acre is valued at \$2,200 per acre, results in a total unrounded land value of \$322,542. \$322,542 does not round to \$321,200.

⁷³ See, E7:1.

2. Method of Valuation

Mr. Hill and Mr. Calvanico used very different methods to value the land on the Subject Properties. Mr. Hill used a mass appraisal technique to determine the contributory value of the first acre of an individual parcel, the contributory value of any additional acres up to ten acres, and then the contributory value of each additional acre after the tenth acre.⁷⁷ Mr. Hill valued the Lagoon Parcel separately from the Plant Parcel because it is removed from the other parcels and is zoned differently from the other parcels. His calculations of value were as follows for these parcels:

Plant Parcel (1 acre x \$45,000) + (9 acres x \$6,000) + (58.43 acres x \$3,000) = \$274,290;

Lagoon Parcel (1 acre x \$45,000) + (9 acres x \$6,000) + (68 acres x \$3,000) = \$303,000.⁷⁸

Mr. Hill used a different method to determine the actual value of the Well Lots. He testified that based on his experience as an appraiser in Keith County that the water rights may be bought and sold in Nebraska and that the general sale price was \$2,000 per acre.⁷⁹ He asserted that Appellant's purchase of the Well Lots resulted in a transfer in the water rights that had been used by the previous owners to irrigate crops on 320 acres of agricultural land and horticultural land.⁸⁰ He asserted that the value of the Well Lots could be derived by determining the aggregate value of the water rights for 320 acres at \$2,000 per acre and distributing it evenly among the three Well Lots.⁸¹ Consequently, Mr. Hill derived a total value of \$640,000 for the water rights, divided it evenly three ways, and determined the rounded actual value of each Well Lot at \$213,335.⁸²

In contrast, Mr. Calvanico valued all of the land associated with the Subject Property as one unit using one methodology.⁸³ He obtained three sales of vacant land and adjusted the

⁷⁴ See, E8:1.

⁷⁵ See, E9:1.

⁷⁶ See, E10:1.

⁷⁷ See, E12:39.

⁷⁸ See, E12:40.

⁷⁹ See, E12:40.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See, E8-E10.

⁸³ See, E15:41-42.

comparable properties to derive an opinion of the per acre value of the land.⁸⁴ Mr. Calvanico gauged the reasonableness of his per acre land value conclusion by comparing it to the average values of agricultural land and horticultural land as reported in the Furnas County Reports and Opinions.⁸⁵ NCP asserted that the Well Lots should be valued the same as any other irrigated acre.

For purposes of analysis, the Commission will first examine the County Board's determinations of the actual value of the land components of the Plant Parcel and Lagoon Parcel, and will separately analyze the County Board's determinations of the actual values of the Well Lots.

In the assessment or appraisal of land, generally as the size of the parcel increases, the price per acre decreases, and conversely as the size of the parcel decreases, the price per acre increases.⁸⁶ Mr. Hill's methodology examined sales of parcels with varying sizes and derived the value of the first acre and all subsequent acres in accordance with this common assessment and appraisal principle.⁸⁷ The sales used in his analysis support his conclusions.⁸⁸ The Commission finds that Mr. Hill's determinations of the land value for the Plant Parcel and the Lagoon Parcel, which were adopted by the County Board, are reasonable and not arbitrary.

Mr. Calvanico's appraisal also took into consideration the general assessment and appraisal principle that with land generally as the size of the parcel increases, the price per acre decreases, and conversely as the size of the parcel decreases, the price per acre increases, but did so using a different method.⁸⁹ Mr. Calvanico applied negative percentage adjustments to the size of his comparable sales because his sales were smaller than the total area of all the land components of the Subject Property.⁹⁰ However, the Commission notes that there is nothing in the record that establishes how Mr. Calvanico derived his percentage adjustments. Percentage adjustments are considered quantitative adjustments.

⁸⁴ See, E15:41-42.

⁸⁵ See, E15:41-42.

⁸⁶ See, Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

⁸⁷ See, E12:39.

⁸⁸ See, E12:39.

⁸⁹ See, Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

⁹⁰ See, E15:42-43.

Two types of adjustments to comparable sales are acceptable, quantitative adjustments and qualitative adjustments.⁹¹ Quantitative adjustments are based on calculations with inputted numerical factors derived from the market.⁹² Several methods exist for determining quantitative adjustments: (1) paired data analysis; (2) grouped data analysis; (3) secondary data analysis; (4) statistical analysis; (5) cost related adjustments; and (6) capitalization of income differences.⁹³ The appraiser uses some subjectivity to select data to use in these approaches when there is an abundance of data available, but the processes are formalistic and derive a specific numerical adjustment to price or specific percentage adjustment.⁹⁴ Again the record is silent concerning Mr. Calvanico's method of determining his quantitative adjustments.

Moreover, after applying his adjustments Mr. Calvanico appears to have given more weight to a single adjusted sale.⁹⁵ The average sale price per acre after adjustment was \$3,477.78 per acre. However, Mr. Calvanico rejected this calculation and instead applied \$2,200 per acre. There is no explanation in the record for this decision. Mr. Calvanico asserted that he considered the average assessed value of agricultural land and horticultural land as a good check on his derived values. In his appraisal report he attempts to support his value by referring to a sale of 3,000 acres of irrigated agricultural land in Ogallala, Nebraska at \$3,600 per acre.⁹⁶

The Reports and Opinions of the Property Tax Administrator for Furnas County provided in the context of the 2014 Statewide Equalization process indicate a weighted average assessed value of \$3,721 for irrigated agricultural land.⁹⁷ Agricultural land and horticultural land is assessed at 75% of actual value. Therefore, the indicated weighted average actual value of irrigated agricultural land as derived by the County Assessor is \$4,961.⁹⁸ The Reports and Opinions of the Property Tax Administrator for Furnas County provided in the context of the 2014 Statewide Equalization process, Mr. Calvanico's own analysis, and Mr. Hill's opinion all contradict Mr. Calvanico's land valuation conclusions for the Plant Parcel and the Lagoon Parcel.

⁹¹ See, Appraisal Institute, *The Appraisal of Real Estate*, at 389-390 (14th ed. 2013).

⁹² See, Appraisal Institute, *The Appraisal of Real Estate*, at 389-390 (14th ed. 2013).

⁹³ See, Appraisal Institute, *The Appraisal of Real Estate*, at 389-390 (14th ed. 2013).

⁹⁴ See, Appraisal Institute, *The Appraisal of Real Estate*, at 389 (14th ed. 2013).

⁹⁵ See, E15:43.

⁹⁶ See, E15:42.

⁹⁷ See, Statewide Equalization 2014, Reports and Opinions of the Property Tax Administrator Furnas County, Exhibit 33, page 12.

⁹⁸ $\$3,721/.75 = \$4,961$ rounded.

The Commission finds that the County Board's determination of the actual value of the land associated with the Plant Parcel and the Lagoon Parcel is reasonable and not arbitrary.

3. Valuation of Well Lots

The Subject Properties of Cases 14C 220, 14C 221, and 14C 222 are each small parcels of .06 acres. Each parcel contains an irrigation well. The three tracts are essentially designed to provide backup for the Taxpayer to ensure that it has an adequate water supply for its plant. Concerning the three Well Lots, the Commission notes additional difficulties. The County Assessor's property record cards, Mr. Hill's Summary Appraisal Report, and Mr. Calvanico's appraisal all disagree about the interests held by NCP in relation to these lots. For Case 14C 220, the property record card found at Exhibit 8 indicates that the lot is owned by NCP. However for Case 14C 221, the property record card found at Exhibit 9 indicates that the owner is Sayer, B. Derald & R. Darwin. The property record card further notes: "NOTHING TO REMOVE B DERALD & R DARWIN."⁹⁹ However, the property record card indicates that the tax notice is addressed to the owners in care of NCP.¹⁰⁰ The property record card at Exhibit 10 for Case 14C 222 indicates as owner Sayer, Bernice Derald, with a further notation: "NOTHING TO REMOVE BERNICE DERALD." However, the property record card indicates that the tax notice is addressed to the owners in care of NCP.¹⁰¹

In his appraisal, Mr. Hill concludes that "[W]ell lots...where [sic] purchased to provide water to the plant."¹⁰² Mr. Hill assesses all of the Well Lots' fee simple interests to NCP, and separately assesses NCP for water rights he asserts are associated with the ownership of the Well Lots.¹⁰³ He determined that value attributed to the three wells (the "water rights") should be computed by valuing them at \$2,000 per water acres on a half section (320 acres). Thus, he valued each well at \$213,335. As pointed out by NCP, this results in a per acre valuation of the .06 acre tracts of over \$3,000,000. The Commission finds that such opinion is not reasonable. Accordingly, it is rejected.

⁹⁹ See, E9.

¹⁰⁰ See, *id.*

¹⁰¹ See, E10.

¹⁰² See, E12:39.

¹⁰³ See, E12:39-40.

Conversely, Mr. Calvanico asserts in his report that: “Property Rights transferred to Nebraska Corn Processing, LLC are assumed to be the leasehold interest in these 2 tracts where the wells are located in Section 5, about 2 miles south of Cambridge – these tracts are subject to a 99 year lease, but Nebraska Corn Processing owns the wells and well equipment[.]”¹⁰⁴ Mr. Calvanico further describes these two Well Lots as: “Two tracts of land in part of the Northwest Quarter of Section 5, Township 3, North, Range 25 W of the 6th P.M., Furnas County Nebraska.”¹⁰⁵ Mr. Calvanico’s descriptions do not correlate with any legal description found on the property record cards for the Well Lots.¹⁰⁶ The Commission presumes that he is in fact referring to the three well lots described above. In his valuation of the three well lots, it appears that Mr. Calvanico only considers the agricultural use of the land, and he gives no weight to the value of the wells on each lot. The Commission finds that analysis to not be reflective of the actual value of the lots.

The three lots were acquired by the Taxpayer in 2012 for a total consideration of \$122,500, or \$40,833 for each lot. The record is silent as to how the parties determined the purchase price other than Mr. Hill’s conclusion that the “tracts are well lots and where (sic) purchased specifically to provide water to the plant.”¹⁰⁷ Nothing in the record indicates that the transaction was anything but an arm’s length transaction. While courts in some states have held that the best evidence of true value or actual value of real estate is the actual sale of the property in an arm’s length transaction, Nebraska courts have never reached that conclusion. However, it is clear that in Nebraska, the purchase price may be taken into consideration in determining actual value for assessment purposes.¹⁰⁸ In *Potts v. Board of Equalization*, the taxpayers had purchased residential real estate for the price of \$150,000. The sale was an arm’s length transaction. The assessor valued the property at \$166,670, and the board of equalization reduced the value to \$165,590. The taxpayers appealed, and the district court set the actual value at \$150,000, the original purchase price. The county assessor utilized a cost approach to obtain his valuation. He was aware of the purchase price, but did not use that information because he thought the taxpayers had received a bargain. The court held that it is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes,

¹⁰⁴ See, E15:16.

¹⁰⁵ See, *id.*

¹⁰⁶ See, E8-10.

¹⁰⁷ See, E12;39

¹⁰⁸ *Potts v. Board of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982).

together with other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. However, the court went on to state "[e]vidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But, where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under the compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration."¹⁰⁹ Given the lack of credible evidence otherwise, the Commission finds that the purchase price paid for the Well Lots by the Taxpayer in 2012 best reflects the actual value of the property for tax year 2014.

E. Valuation of the Improvements

1. Buildings to be Valued as Real Property

The buildings to be valued as real property include the following:

Buildings Case No. 14C-218	Dimensions	Area in Square Feet	Exhibits
Main Office	35' x 45'	1,575	E12:41, E15:28
Grain Receiving	43' x 125'	5,375	E12:41, E15:28
Main Processing & Office	125' x 176'	30,350	E15:28
Maintenance	40' x 60'	2,400	E12:41, E15:28
Fermentation	32' x 140'	4,480	E12:41, E15:28
Wet Cake Slab/Wall	120' x 140'	16,800	E12:41, E15:28
Electric/Energy	30' x 40'	1,200	E12:41, E15:28
Boiler	70' x 75'	5,250	E12:41, E15:28
Pump House	20' x '14'	280	E12:41

2. Depreciation of the Buildings

In its analysis of the valuation of the Subject Property improvements, the Commission has considered the testimony of all witnesses, the appraisal report of Mr. Calvanico, the Summary Appraisal Report of Mr. Hill, and all other evidence received. The Commission has specifically considered issues relating to depreciation. After reviewing the evidence, we find

¹⁰⁹ Id, 213 Neb. 37 at 47, 328 N.W.2d 175 at 181.

that the physical depreciation of the improvements is 10%, economic depreciation is 33%, and functional depreciation is 0%, as explained below.

In its determination of the value of the Subject Property, the County Board relied upon the Summary Appraisal Report prepared by Mr. Hill.¹¹⁰ According to Mr. Hill's Summary Appraisal Report, the combined value of the improvements was \$14,550,024.¹¹¹ Conducting a cost approach analysis, Mr. Hill concluded that the depreciation of the improvements should be as follows:

Physical depreciation: 10%
Functional obsolescence: 0%
Economic obsolescence: 20%

Regarding physical depreciation, Mr. Hill conducted a complete inspection of the Subject Property and concluded that the improvements were "all of average to good quality and average condition for the year that they were built,"¹¹² and concluded that "[t]he total physical depreciation for this property is 10% based on the observed condition of the subject improvements."¹¹³

In regard to functional obsolescence, Mr. Hill noted that the Subject Property ethanol plant was "Delta-T designed" with the capabilities to produce 44 million gallons of ethanol per year.¹¹⁴ His report also noted the plant had undergone modifications to the Delta-T design since the plant was built in 2007, including the addition of two 750,000 bushel storage bins for increased storage, and the installation of a corn oil extractor in order to market distiller's grain extract as a feedstock for biodiesel.¹¹⁵ Mr. Hill further stated that "the plant is fairly new and has recently been updated with some of the newest equipment," concluding that "there is no functional obsolescence for this property."¹¹⁶

Regarding economic obsolescence, Mr. Hill generally found that, "as of January 1, 2014 I would consider the market economy of ethanol plants and its products to be **steady**." (emphasis in

¹¹⁰ See Exhibit 12 and Exhibit 16.

¹¹¹ Mr. Hill's opinion of value of the land was \$1,227,280. See Exhibit 12:40. His opinion of value of the land and improvements combined was \$15,777,304. See Exhibit 12:47.

¹¹² Exhibit 12:41.

¹¹³ Exhibit 12:47.

¹¹⁴ Exhibit 12:40.

¹¹⁵ Exhibit 12:40.

¹¹⁶ Exhibit 12:47.

original).¹¹⁷ Further, Mr. Hill concluded, “[b]ecause of the significant amount of foreclosures in the market,” and the sunset of some tax incentives, “I am giving this plant a 20% economical obsolescence adjustment.”¹¹⁸

As noted above, NCP offered the appraisal report prepared by Mr. Calvanico.¹¹⁹ Mr. Calvanico determined the improvements of the Subject Property to have a value of \$5,359,367.¹²⁰ Mr. Calvanico determined the following regarding depreciation of the improvements:

Physical depreciation: 10%
Functional obsolescence: 0% to 70%
Economic obsolescence: 33%

In regard to physical depreciation, Mr. Calvanico noted the age of the property to be 6 years as of the effective date, but that the improvements had “suffered some accelerated deterioration resulting from the high volume of corn dust” and its “abrasive effects.”¹²¹ Because of this, Calvanico estimated the effective age of the improvements at ten years.¹²² He therefore estimated physical depreciation at 10%.¹²³

Mr. Calvanico determined functional obsolescence to be at 0% to 70%. He based this opinion, in part, on the fact that the Subject Property was built according to a Delta-T design rather than a newer, “technologically superior ICM design.”¹²⁴ Because of this design inferiority, Calvanico estimated a 20% deduction for functional obsolescence.¹²⁵

In regard to economic obsolescence, Mr. Calvanico noted, among other things, that the “percentage of ethanol plants closed in Nebraska as of mid-2013,” and “an overbuilding, or oversupply, of Ethanol Plants over 2008-2009,” which he asserted “caused profit margins in

¹¹⁷ Exhibit 12:23.

¹¹⁸ Exhibit 12:47.

¹¹⁹ See, Exhibit 15.

¹²⁰ Exhibit 15:4.

¹²¹ Exhibit 15:46. The Commission notes, however, that Mr. Calvanico testified that he last inspected the Subject Property on July 14, 2010.

¹²² Exhibit 15:46.

¹²³ Exhibit 15:46.

¹²⁴ Exhibit 15:46.

¹²⁵ E31:56.

2013 to substantially decrease, and economic profit ... [to be] substantially minimized.”¹²⁶ He estimated economic obsolescence to be 33%.¹²⁷

Depreciation is “a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.”¹²⁸ Both Mr. Hill and Mr. Calvanico estimated physical depreciation of the improvements to be 10%. After reviewing the evidence, we find that this estimate is reasonable.

Functional obsolescence is defined as “[a]n element of depreciation resulting from deficiencies or superadequacies in the structure.”¹²⁹

Functional utility is the overall usefulness and desirability of a property. The ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands and can be curable or incurable. Functional obsolescence exists when a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on. It is the inability of a structure to perform adequately the function for which it is currently used.¹³⁰

Implicit in Mr. Calvanico’s opinion is that since the Subject Property had been constructed according to an inferior Delta-T design it suffered from a “lack of modern equipment” and had the inability to perform adequately the function for which it was used on the effective date. We find that since the Subject Property was built approximately six years prior to the effective date it did not lack “modern equipment,” nor did it suffer from the inability to perform adequately the function for which it was used on the effective date. We therefore reject the assertion that the Subject Property suffered from functional obsolescence on the effective date.

Economic obsolescence has the same meaning as external obsolescence.¹³¹ External obsolescence is defined as “[a]n element of depreciation; a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the owner, landlord, or

¹²⁶ Exhibit 15:47.

¹²⁷ Exhibit 15:47.

¹²⁸ The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at pp. 79-80.

¹²⁹ The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at p. 122.

¹³⁰ *Property Assessment Valuation, 3rd Ed., International Association of Assessing Officers* (2010), at pp. 260-61.

¹³¹ The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at p. 92.

tenant.”¹³² We find Mr. Calvanico’s opinions as expressed above are persuasive, and that the Subject Property was experiencing 33% economic obsolescence on the effective date.

The Commission finds, therefore, that as of the effective date of January 1, 2014, the buildings at the Subject Property should receive depreciation deductions of 10% for physical depreciation and 33% for economic obsolescence, but should not receive any depreciation deduction for functional obsolescence.

Upon a review of the evidence, and an analysis of the applicable Marshall Valuation Services costing factors, the Commission finds as follows:

Buildings Case No. 14C-218	Actual Value
Main Office	\$ 91,761 ¹³³
Grain Receiving	\$ 155,607 ¹³⁴
Main Processing & Office	\$ 3,369,683 ¹³⁵
Maintenance	\$ 56,954 ¹³⁶
Fermentation	\$ 640,193 ¹³⁷
Wet Cake Slab/Wall (non-building)	\$ 445,559 ¹³⁸
Electric/Energy	\$ 40,199 ¹³⁹

¹³² The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at p. 106.

¹³³ Unit cost multiplier, \$62.28 + Sprinkler multiplier, \$4.12 + HVAC multiplier, \$14.90 = Total unit cost multiplier, \$81.30. Square feet, 35 x 45 = 1,575. Height, 14 feet. Height multiplier 1.046. Perm multiplier 1.183. Current cost multiplier 0.98. Local multiplier 0.98. Replacement cost new = \$152,174. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$91,761.

¹³⁴ Unit cost multiplier, \$29.49 + Sprinkler multiplier, \$2.60 = Total unit cost multiplier, \$32.09. Square feet, 43 x 125 = 5,375. Height, 30 feet. Height multiplier 1.382. Perimeter multiplier 1.083. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$258,054. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$155,607.

¹³⁵ Unit cost multiplier, \$132.07 + Sprinkler multiplier, \$1.98 = Total unit cost multiplier, \$134.05. Square feet, 125 x 176 = 30,350. Height, 35 feet. Height multiplier 1.515. Perm multiplier 0.907. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$5,588,197. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$3,369,683.

¹³⁶ Unit cost multiplier, \$29.49 + Sprinkler multiplier, \$2.89 = Total unit cost multiplier, \$32.38. Square feet, 40 x 60 = 2,400. Height, 16 feet. Height multiplier 1.041. Perimeter multiplier 1.168. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$94,451. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$56,954.

¹³⁷ Unit cost multiplier, \$132.07 + Sprinkler multiplier, \$2.60 = Total unit cost multiplier, \$134.67. Square feet, 32 x 140 = 4,480. Height, 35 feet. Height multiplier 1.515. Perimeter multiplier 1.162. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$1,061,681. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$640,193.

¹³⁸ Unit cost multiplier, \$44.00. Square feet, 120 x 140 = 16,800. Height multiplier 1.00. Perimeter multiplier 1.00. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$738,904. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$445,559.

¹³⁹ Unit cost multiplier, \$41.50 + Sprinkler multiplier, \$2.89 = Total unit cost multiplier, \$44.39. Square feet, 30 x 40 = 1,200. Height, 14 feet. Height multiplier 1.00. Perimeter multiplier 1.252. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$66,665. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$40,199.

Buildings Case No. 14C-218	Actual Value
Boiler	\$ 228,972 ¹⁴⁰
Pump House	\$ 2,306 ¹⁴¹
Total Buildings	\$ 5,031,234

Unless indicated otherwise, the value of each site improvement is derived from Mr. Calvanico's appraisal. The Commission finds as follows:

Site Improvements Case No. 14C-218	Actual Value
Concrete Drives & Lots	\$ 500,000 ¹⁴²
Railroad Scale	\$ 50,000 ¹⁴³
Railroad Spurs	\$ 500,000 ¹⁴⁴
Railroad Load out (Ethanol)	\$ 75,000 ¹⁴⁵
Truck Load out (Ethanol)	\$ 75,000 ¹⁴⁶
Ethanol Storage Tanks (2) (541,000 gallons each)	\$ 541,000 ¹⁴⁷
Day Tanks (2) (155,750 gallons each)	\$ 100,000 ¹⁴⁸
Denaturant Tank (91,000 gallons)	\$ 45,430 ¹⁴⁹
Clear Water Tank (587,000 gallons)	\$ 281,500 ¹⁵⁰
Truck Scales (2) (60 Ton) (at Main Office)	\$ 66,330 ¹⁵¹
Truck Scale (60 Ton) (at Wet Cake)	\$ 33,165 ¹⁵²
Truck Scale (60 Ton) (at Grain Receiving)	\$ 33,165 ¹⁵³
Grain Bins (2) (750,000 bushels each)	\$ 993,590 ¹⁵⁴

¹⁴⁰ Unit cost multiplier, \$41.50 + Sprinkler multiplier, \$2.60 = Total unit cost multiplier, \$44.10. Square feet, 70 x 75 = 5,250. Height, 35 feet. Height multiplier 1.515. Perimeter multiplier 1.083. Current cost multiplier 1.02. Local multiplier 0.98. Replacement cost new = \$379,721. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$228,972.

¹⁴¹ Unit cost multiplier, \$12.86. Square feet, 20 x 14 = 280. Height, 12 feet. Height multiplier 1.038. Perimeter multiplier 1.044. Current cost multiplier 1.00. Local multiplier 0.98. Replacement cost new = \$3,824. Physical depreciation, 10%. Economic depreciation 33%. Replacement cost new less depreciation = \$2,306.

¹⁴² Exhibit 15:48.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Exhibit 12:41. Neither appraiser included a value for truck scales. The Commission relied upon the appropriate value of \$55,000 for each 60 Ton truck scale, taken from the applicable Marshall Valuation Services manual, and applying a current cost multiplier of 1.00 and a local multiplier of 1.00. To determine the replacement cost new less depreciation, the Commission deducted 10% for physical depreciation and 33% for economic depreciation.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Exhibit 12:41. The Calvanico appraisal included a value for Grain Bins, but that value included only two bins. According to the Hill Report, two additional 750,000 bushel bins were built in 2012. See, Exhibit 12:40. To value these bins, the Commission relied upon the applicable Marshall Valuation Services manual, determining the typical life expectancy of the bins at 20 years,

Grain Bins (2) (250,000 bushels each)	\$ 333,881 ¹⁵⁵
Site Preparation	\$ 0 ¹⁵⁶
Total Site Improvements	\$ 3,628,061

VII. 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 clear and convincing evidence that the determinations of value by the County Board are arbitrary or unreasonable.

For all of the reasons set forth above, the decisions by the County Board for each of the five parcels for tax year 2014 should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Furnas County Board of Equalization determining the taxable value of each of the parcels in Case Nos. 14C 218, 14C 219, 14C 220, 14C 221, and 14C 222 for tax year 2014 are vacated and reversed.¹⁵⁷

and applying a unit cost multiplier of 1.04 to determine a unit cost for each bin of \$780,000. The Commission then applied a current cost multiplier of 1.00 and a local cost multiplier of 0.98 to reach a replacement cost new of \$764,400 per bin. After applying physical depreciation of 3% and economic depreciation of 33%, the replacement cost new less depreciation was determined to be \$496,795 per bin.

¹⁵⁵ Exhibit 12:41. The Calvanico appraisal included a value for Grain Bins, but that value included only two bins. The Commission relied upon the applicable Marshall Valuation Services manual, applying a unit cost multiplier of 1.13 to determine a unit cost for each bin of \$282,500, and then applied a current cost multiplier of 1.00 and a local cost multiplier of 0.98 to reach a replacement cost new of \$276,850 per bin. After applying physical depreciation of 10% and economic depreciation of 33%, the replacement cost new less depreciation for the two bins was determined to be \$333,881.

¹⁵⁶ Neither appraiser included a value for Site Preparation nor is there any other evidence in the record to rely upon to determine a site preparation value. Based upon the evidence in the record, the Commission is also not able to utilize the Marshall Valuation Services manual to determine this value.

¹⁵⁷ 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 time of the protest proceeding.

2. The taxable value of the Subject Property for tax year 2014 is:

14C 218	Land	\$ 284,280
	Buildings	\$ 5,031,234
	<u>Site Improvements</u>	<u>\$ 3,628,061</u>
	Total	\$ 8,943,575
14C 219	Land	\$ 303,000
	<u>Site Improvements</u>	<u>\$ 100,000</u>
	Total	\$ 403,000
14C 220	Land	\$ 40,833
14C 221	Land	\$ 40,833
14C 222	Land	\$ 40,833

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Furnas County Treasurer and the Furnas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2014.
7. This Decision and Order is effective for purposes of appeal on January 27, 2017.¹⁵⁸

Signed and Sealed: January 27, 2017

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

¹⁵⁸ 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.